Petition

Court, U.S.
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IN THE

Supreme Court of the United States

_____ TERM, 1981

NO. 81-167

PAN-ISLAMIC TRADE CORPORATION
Petitioner

v.

EXXON CORPORATION, ET AL,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court, in *First National Bank of Arizona v. Cities Service*[1] (hereinafter *Cities Service*) intended to so modify Rule 56, F.R.C.P. and *Poller v. Columbia Broadcasting System*[2] (hereinafter *Poller*) that in anti-trust conspiracy cases, once the defendants deny under oath the alleged conspiracy and file their motion for summary judgment, the burden of proof and producing evidence shifts to and remains with the plaintiff throughout the summary judgment proceeding so that, in order to preclude summary judgment, the plaintiff must: produce significant evidence with respect to *every* issue and sub-issue; negate every possible adverse inference; anticipate every possible legal objection to its evidence, though not made by Respondents in the district court; overcome every possible adverse legal theory, though not advanced by Respondents in the district court; and, to avoid resolution of competing inferences against Petitioner, produce a preponderance of the evidence with respect to any issue wherein such competing inferences exist.

2. Whether the Court of Appeals misapplied or misconstrued Rule 56, F.R.C.P., and the decisions of this Court in *Poller, Cities Service, Interstate Circuit, Inc. v. U.S.*,[3] (hereinafter *Interstate*) and *Norfolk Monument Company, Inc. v. Woodlawn Memorial Gardens*[4] (hereinafter *Norfolk*) when it affirmed the District Court's summary judgment in the face of significant probative, direct and circumstantial evidence in the record that: (a) the Respondents' parallel refusal to buy the Petitioner's Algerian oil occurred during a French inspired worldwide

1. 391 U.S. 253 (1968).
2. 368 U.S. 464 (1962).
3. 306 U.S. 208 (1939).
4. 394 U.S. 700 (1969).

boycott of Algerian oil and after the French national oil companies' call for the boycott had been published throughout the world in the major press; (b) that all the Respondents had a similarity of interest vis-a-vis the nationalization of the French oil by the Algerians and the ensuing boycott, that is they were all major, international oil companies, many with holdings throughout North Africa and the Middle East and dealings with the French national oil companies who were sponsoring the boycott; (c) that many of the Respondents bought oil directly from Algeria *before and after* the boycott *but none of the Respondents bought oil directly from Algeria during the boycott;* (d) that it was not in the Respondents' own economic interest to refuse to purchase the Petitioner's oil, particularly in view of the price limitation (escalation clause) Petitioner had with Sonatrach (the Algerian national oil company); (e) that one of the principal officers of the Respondent Texaco stated that Texaco could not buy the oil at that time (during the boycott) but that if any of the other major oil companies did buy any of the oil then, Texaco "would buy the rest"; (f) that the principals of the Petitioner, through their efforts to sell the oil throughout the world during the boycott period, and by the manner of dealing of the major oil companies, gained the impression that the oil companies were refusing to buy because of the boycott; (g) that though the Respondents gave as their only reason for refusing to purchase the oil the fact that start-up price was too high, and they admitted they knew that the start-up price was negotiable, they never attempted to negotiate the start-up price.

3. Whether the Court of Appeals' view that only those Respondents shown to have been offered the oil (despite evidence of their similarity of interests with

those who were admittedly offered the oil[5]) could be held liable, contravenes this Court's decision in *Continental Ore Co. v. Union Carbide & Carbon Co.*[6] (hereinafter *Continental Ore*) and the decision of the third circuit in *Bogosian v. Gulf Oil Co.*[7] and whether the Court of Appeals and District Court erred in holding that there was no significant probative evidence to the effect that the Respondents who did not admit being contacted[8] were in fact contacted by Petitioner and offered the oil.

4. Whether the Court of Appeals erred in refusing to consider as admissible for any purposes the following:

(a) A memorandum prepared (in this petition and brief referred to as the "Ragan Memo") by a consultant to Petitioner even though prepared at the time of his efforts to sell oil during the boycott period, in the course of business on behalf of the Petitioner, and he testified that it was accurate and constituted a report of events from direct sources within Petitioner's organization, recorded soon after the events occurred;

(b) Statements contained in major newspapers to the effect that the French national oil companies had called for a boycott of Algerian oil (at least for the purposes of showing that an "invitation" to boycott had been issued);

(c) Statements in major newspapers, public documents, books and trade journals, concerning market

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5. Respondents Exxon, Shell, Texaco and Sun admitted they were offered the oil by Petitioner and refused to buy it.

6. 370 U.S. 690 (1962).

7. 561 Fed. 2d 434 (3rd Cir. 1977) *cert. den.* 439 U.S. 1086.

8. Respondents Amoco, Getty, Standard Oil of Indiana, Tenneco, Gulf, Mobil, Continental, Amerada Hess, Occidental, Atlantic Richfield and Phillips Petroleum Company.

quotations, posted prices, and other data with respect to the market price of Algerian oil and with respect to the historical events leading up to the nationalization of French-owned oil by the Algerians and the ensuing boycott; and

(d) The opinion and impression statements of the principals of the Petitioner expressing the view that the start-up price of oil under Petitioner's contract with Sonatrach was within the market range and that it was their impression that the Respondents were refusing to buy Petitioner's oil because of the boycott and not because the offer was economically unattractive.

5. Whether the Court of Appeals failed to follow the rationale and intent of such important decisions of this Court as *Hickman v. Taylor,*[9] (hereinafter *Hickman*) and *Hospital Building Company v. Trustees of Rex Hospital,*[10] (hereinafter *Hospital Building Co.*) with respect to the following procedural ruling of the District Court and Court of Appeals:

(a) In refusing to compel the Respondents to answer relevant interrogatories, particularly in ruling that the Petitioner had not properly filed a motion to compel even though the District Court was requested to compel the Respondents to answer the interrogatories at a recorded oral hearing before the Court and in a written motion for extension of time for discovery filed with the Court;

(b) In failing to compel the Respondent Exxon to produce relevant documents, particularly the contract that Exxon admittedly entered into with Sonatrach just three months after the boycott had ended,

9. 239 U.S. 490 (1947).
10. 425 U.S. 738 (1976).

which involved about the same quantity of oil purchased by the Petitioner for the same five-year term;

(c) In limiting discovery to the narrow time period of the boycott and to the narrow subject of the specific Algerian oil which the Petitioner had purchased;

(d) In failing to allow the Petitioner an additional unlimited six-months of discovery, instead of allowing only ninety days' discovery, limited to discovery already instituted prior to the extension order, particularly in view of the fact that the District Court delayed almost two years in ruling upon the Petitioner's motion for leave to file amended complaint, a decision which all of the parties agreed would vastly affect the direction and scope of discovery.

6. Whether the Court of Appeals' holding that the District Court had correctly refused Petitioner leave to file an amended complaint on the grounds that the Petitioner was not within the target area of allegations that the Respondents were monopolizing, and/or conspiring to monopolize, the various phases of the oil industry, from the exploration for and production of crude oil to the sale of gasoline and other refined products to the consumer, including the purchase and sale of and refining of crude oil, conflicts with such decisions of this Court as *Foman v. Davis*[11] (hereinafter *Foman*); *Mandeville Island Farms v. American Crystal Sugar Co.*[12] (hereinafter *Mandeville Farms*) and *Reiter v. Sonotone Corp.*[13] (hereinafter *Reiter*).

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11. 371 U.S. 178 (1962).
12. 334 U.S. 219 (1948).
13. 99 S.Ct. 2326 (1979).

LIST OF ALL PARTIES TO THIS PROCEEDING

Pan-Islamic Trade Corporation, Petitioner, (which has no parent, subsidiaries, affiliates or sister corporations).

Exxon Corporation, Respondent

Atlantic Richfield Company, Respondent

Texaco Inc., Respondent

Gulf Oil Corporation, Respondent

Amerada Hess Corporation, Respondent

Shell Oil Company, Respondent

Sun Oil Company, Respondent

Continental Oil Company, Respondent

Mobil Oil Corporation, Respondent

Phillips Petroleum Company, Respondent

Standard Oil Company of Indiana and American Oil Company, Respondents

Occidental Petroleum Corporation, Respondent

Tenneco, Inc., Respondent

Getty Oil Co., Respondent

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PAN-ISLAMIC TRADE CORPORATION
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EXXON CORPORATION, ET AL,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

RELEVANT ORDERS AND JUDGMENTS OF THE DISTRICT COURT AND THE COURT OF APPEALS

1. The order of the District Court dated August 9, 1976, overruling Petitioner's Motion for Leave to File Amended Complaint, and reported in *1976-2 Trade Cases, ¶ 61,024,* (S.D. Tex. 1976) (Appendix 1 to this Petition).

2. The order of the District Court dated Feb. 14, 1977, refusing to compel Respondents to answer relevant interrogatories and granting only ninety (90) days of limited discovery instead of the additional six (6) months of unlimited discovery requested by Petitioner (Appendix 2 to this Petition).

3. The order of the District Court dated March 25, 1977, refusing to grant Petitioner's motion to compel the Respondent Exxon to produce relevant documents (Appendix 3 to this Petition).

4. The opinion and judgment of the District Court dated January 3, 1978, reported in

granting Respondents' Motion for Summary Judgment (Appendix 4 to this Petition).

5. The opinion and judgment of the United States Court of Appeals for the Fifth Circuit dated December 10, 1980, reported in 632 F.2d 539 (5th Cir. 1980), affirming the summary judgment of the District Court (Appendix 5 to this Petition).

6. The order of the United States Court of Appeals, Fifth Circuit, denying Petitioner's Petition for Rehearing and Rehearing En Banc, dated March 25, 1981 (Appendix 6 to this Petition).

GROUNDS ON WHICH JURISDICTION OF SUPREME COURT INVOKED

The judgment of the Court of Appeals was entered on December 10, 1980 (Appendix 5). A timely petition for rehearing and rehearing En Banc was denied on March 25, 1981 (Appendix 6). The jurisdiction of this Court is invoked under 23 U.S.C. Section 1254(1).

STATUTES AND RULES WHICH THIS CASE INVOLVES

This case involves directly and indirectly the construction and application of Sections 1 and 2 of the Sherman Anti-Trust Act, 15 U.S.C.A. Section 1 and 2; the Clayton Act, 15 U.S.C.A., Section 15; the Seventh Amendment to the Constitution of the United States; Rule 56 of the Federal Rules of Civil Procedure; Rule 7 of the Federal Rules of Civil Procedure; and Rules 803(6), 803(24) and 804(b)(5) of the Federal Rules of Evidence. All these constitutional, statutory and rule provisions are reprinted in pertinent part in Appendices 7A-7H to this Petition.

STATEMENT OF THE CASE

A. The Original and Amended Complaint

In its original complaint (Rec. 1-50), Petitioner al-

leged that on or about the 13th day of May, 1971 it entered into a contract with Sonatrach, the national oil company of Algeria, for the purchase of 80 million barrels of Algerian crude to be lifted between June 1971 and June 1972, with an option to purchase and lift 40 million barrels of Algerian crude in each of the succeeding four years; and that thereafter the Petitioner attempted to sell the oil on the open market, offering the oil to the Respondents, but that the Respondents refused to buy any of it due to antitrust reasons, one of them being acquiescence and/or participation in a French-inspired boycott of Algerian oil. Petitioner alleged that the Respondents thus violated Sections 1 and 2 of the Sherman Anti-Trust Act, causing Petitioners substantial damages.

On December 4, 1974, about nine months after the original complaint was filed, Petitioner sought leave to amend its complaint.[14] The amended complaint amplified the allegations of the original complaint and sought to add a second count ("Count Two") in which it was alleged that the Respondents were involved in an extensive monopoly of all phases of the oil industry, specifically including the monopoly and conspiracy to monopolize crude sales and the refinery phase of the oil industry.[15]

After extensive argument at a hearing before the District Court on June 10, 1976 (see Trans. of Hearing, Sup. Record) the Court refused to grant leave to amend on the ground that Petitioner was not within the

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14. See Motion to File Amended Complaint at Rec. 556, 557 and the Amended Complaint at Rec. 1461-1463 and pp. 131-134 of Transcript of hearing of June 10, 1976.

15. As pointed out by Mr. Gochman, one of the counsel for Petitioner (at June 10, 1976 Hearing, pp. 96, 110), Count Two basically tracked the complaint filed by the Federal Trade Commission (Docket No. 8934, F.T.C.; see copy attached to "Response of Plaintiff to Motion of Defendant Shell Oil Co. for Security for Costs", Docs. 105, 106, Record).

target area of any of the phases of the oil industry which it said the Respondents had monopolized or conspired to monopolize (see order, Rec. 1707-1750, Appendix 1).

B. Procedural Facts Concerning Discovery

All the parties to this suit, and the District Court itself, agreed that effective discovery could not be conducted in this case until the District Court ruled upon the Petitioner's amended complaint.[16] From the time the motion to file the amended complaint was filed in October of 1974, until the Court orally ruled on the motion on June 10, 1976, the Petitioner's counsel repeatedly requested the District Court to have a hearing on the question of the amended complaint so that effective discovery could proceed.[17] Therefore, it was not until June 10, 1976, as reflected by the order entered on August 9, 1976, that the direction of this lawsuit, and the scope of the discovery that would be necessary for the development of the relevant facts, was determined by the District Court.

During the almost two years the District Court delayed ruling on the amended complaint, the Petitioner submitted

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16. See Appendix 14 for excerpts of interrogatory questions which the Respondents refused to answer on grounds they were outside the scope of original complaint. In addition, the significant portions of Petitioner's motion under Rule 16, for handling pretrial discovery pursuant to the Manual for Complex Litigation was deferred by agreement of all parties until after the Court ruled on amended complaint. (Docs. 81, 82, 83, 84, 98 and 101 of Record). And see Continental's refusal to answer, e.g., interrogatory 29, because "such interrogatory is predicated upon Plaintiff's Amended Complaint which is pending before the Court," (Doc. 153); see also Trans. of Hearing of June 10, 1976, pp. 121, 130, 127, 128, 126, particularly the statement of counsel for Exxon at p. 121 that the court's ruling on the amended complaint "would affect the scope of discovery"; and see Rec. 1285.

17. While there is only one specific record of Petitioner's request for a conference (June 11, 1975) concerning the amended complaint, Rec. 763-764, the colloquy which appears at pp. 127-129 of the transcript of the hearing of June 10, 1976 indicates that it was the District Court that delayed the hearing until June 10, 1976 and that such delay did not occur as a result of failure on the part of the Petitioner to urge the Court to have such hearing.

preliminary interrogatories to the Respondents in hopes of gaining some basic information necessary for more intensive discovery (Rec. 801-820). However, the response of the Respondents manifested an arrogant condescension toward the Petitioner and its rights as a party-litigant.[18] The unanswered questions included inquiries about documents relating to anti-trust matters sent from third parties; the purchase or sale of Libyan or Algerian crude oil; Respondents' property in Algeria; anti-trust communications between Respondents; and communications relating to the purchase and sale of Algerian crude oil during the years 1970 and 1971.[19]

The futility is also illustrated by the questions Respondents' principals refused to answer during depositions taken after the District Court ruled on the amended complaint and the documents they refused to produce at such depositions.[20]

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18. Occidental answered only 1 question completely and 5 partially out of 90 interrogatories submitted (Rec. 1143-1178); Atlantic Richfield did not answer any (Rec. 1214-1248); Getty answered only one fully and one partially (Rec. 1179-1213); Amerada-Hess answered only two fully and five partially (Rec. 1249-1276); Tenneco answered only five partially (Rec. 1424-1458); all of the rest, except Conoco, refused to answer thirty or more interrogatories outright and confined their answer to the rest to a very limited time period around the date of the contract (May 13, 1971) and to the narrow subject of the Pan-Islamic/Sonatrach contract; See Objections and Answers for Shell (Rec. 838-867); Gulf (Rec. 905-991); Phillips (Rec. 1003-1038); Sun (Rec. 1047-1100); Mobil (Rec. 1104-1141); Texaco (Rec. 1279-1313); Exxon (Rec. 1356-1420); and even Conoco severely restricted the scope of its answers (Doc. 153).

19. Excerpts from the unanswered interrogatories, and the inadequately answered interrogatories, are contained in Appendix 14. This Appendix is included along with Appendices 8A through 16, to enable this Court to deal more assiduously with this voluminous record.

20. Examples: Doyle depo. 4, 25, 26, 32, 33, 43, 44, 45, 47, 48, 59, 67, 70-73, 77, 78, and 88; Ellis depo. 12, 15, 43, 40, 48, 71-74, 88, 89, and particularly p. 74 where counsel for Exxon points out question was beyond scope of complaint; deposition of Texaco officials Routhier and Connor were veritable farces, Routhier depo.

The Court of Appeals approved the District Court's refusal to compel the Respondents to answer the unanswered interrogatories and based its decision upon the proposition that the Plaintiff did not file a *formal* motion to compel and therefore was not entitled to have the ruling of the District Court considered on appeal.[21] ***However, the Court of Appeal's ruling is directly contrary to the record in this case.*** At the pretrial hearing on June 10, 1976, recorded and transcribed, Petitioner's counsel repeatedly requested the District Court to compel the Respondents to answer interrogatories.[22] In addition, Petitioner's "Motion to Reconsider Order Denying Plaintiff's Motion to Extend Time for Discovery" (Doc. 243, Supp. Rec.) the Petitioner's counsel again, in writing this time, requested the Court to compel the Respondents to answer the unanswered interrogatories.[23] The Respondents did not at any time in the District Court contend that the Petitioner's motion to compel was not adequate as to "form"[24]; and the District Court denied the Petitioner's motion to compel solely upon the merits (Rec. 2080-2083 and App. 2 to this Petition).

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at pp. 9-12, where counsel severely restricted scope, repeatedly objecting to questions, pp. 13, 14, 16, 17, 18-21, 23-26, 33-35, 44, 47, 49, 57-60, 68-71, 82-84, 90-92 and 96 and Connor depo. where counsel again objected that questions were beyond the scope of the original complaint, e.g. pp. 11, 17, 18, 20, 37 and 67. See also objections and instructions not to answer in depo. of Moore of Shell, pp. 23, 25, 26, 34, 60, 67 and where counsel refused to provide documents without a Rule 34 motion pp. 45, 54, 60, 67, 70, 75, 76, 77, 79.

21. 632 Fed. 2d at p. 552.

22. See transcript of hearing of June 10, 1976 and particularly see Appendix 15 which contains excerpts from such transcript relating to Petitioner's request of the Court to rule on the interrogatories.

23. See Appendix 16 for excerpts relating to such requests by the Petitioner.

24. The Respondents' response to the Petitioner's motion to compel was confined solely to the merits of the motion (see Doc. 244, Defendants' Joint Opposition to Plaintiff's Motion for Rehearing).

At the hearing of June 10, 1976, the District Court granted the Petitioner additional discovery for six months from the date of the hearing[25] but such discovery was to be limited solely to what the court construed to be the scope of the original complaint (see excerpts from Trans. of Hearing of June 10, 1976, Appendix 15). The Petitioner's counsel could not commence discovery immediately because, between June 1976 and September 1976, Petitioner was forced to file motions to reinstate two of the Defendants who had been dismissed and was further engaged in filing an interlocutory appeal on the question of the amended complaint.[26] However, prior to the end of the six-month period (December 10, 1976), the Petitioner was able to take the depositions of a principal of Shell Oil and the principals of Exxon Corporation

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25. The Court of Appeals points out that only six months was requested by Petitioner at the June 10, 1976 hearing (632 Fed. 2d at p. 551). However, this request was made just *after* the Court had stated it was not going to rule on the amended complaint. Toward the end of the hearing the Court changed its mind and denied the motion. The Court of Appeals asserts that Petitioner should have then revised its estimate of time needed for discovery. However, the hearing had been going on for over two hours, the Court had changed its mind three times about the complaint (first granting leave, then stating it was not going to rule and finally denying leave, pp. 89-90, 105-106 and 138 of Trans. of June 10, 1976 hearing), the Court virtually admitted it had been responsible for the almost two year delay in ruling on the amended complaint and Petitioners just felt that the Court would, under such circumstances, later be reasonable about additional time if needed. In any event, the Court of Appeals missed the point: ***Petitioner is not complaining about the grant of only six months on June 10, 1976 but is complaining about the grant of only 90 days of limited discovery on Feb. 14, 1977.***

26. See Rec. 1811-1813, being the Motion to Reinstate filed by Petitioner; Doc. 207, Appendix 1, granting leave to file interlocutory appeal on Aug. 5, 1976; Rec. 1970, which shows that the Fifth Circuit did not rule upon Petitioner's interlocutory appeal until December 13, 1976, which corresponded with the end of the six-month discovery period; and see Rec. 2080-2082, which shows that the District Court did not rule upon Petitioner's Motion to Reinstate until February 14, 1977, at which time the District Court did reinstate the dismissed causes of action.

(see depositions of Doyle and Ellis of Exxon and Moore of Shell).

On November 29, 1976, Petitioner filed its motion for an additional six-months unlimited discovery (Rec. 1938-1941). On December 17, 1976 the Court summarily refused Petitioner's request (Rec. 1971, 1972) and Petitioner immediately filed its Motion for Reconsideration (Doc. 243, Supp. Rec.). At the depositions of the Exxon officers, the witnesses, upon instruction of Exxon counsel, had refused to produce *any* documents, including memoranda of their dealings with Petitioner and copies of the Exxon-Sonatrach contract, which was executed just three months after the boycott ended, involving the same quantity of oil and basically the same term of purchase as the Pan-Islamic/Sonatrach contract.[27] Because of their refusal to produce any documents, the Petitioner attached to its Motion for Reconsideration a written motion to compel the Respondent Exxon to produce the requested documents (Rec. 2073-2076).

In the meantime, the District Court partially relented and granted the Petitioner ninety days additional discovery (instead of the six months requested) but confined that ninety-days discovery solely to that discovery which Petitioner had "initiated prior to the December, 1976 cutoff date originally established by the Court" (Rec. 2080-2083, Appendix 2). Petitioner immediately formally filed the motion to produce documents (Rec. 2073-2078). The Respondent Exxon resisted the Petitioner's motion on the grounds that it was filed out of time and sought documents beyond the scope of

27. Petitioner's counsel was particularly anxious to see whether or not the Exxon-Sonatrach contract contained a price limitation clause (or escalation clause) as attractive as the one in the Pan-Islamic/Sonatrach contract. See Appendix 8A, being the economic evaluation of Petitioner's offer to Respondents, wherein Prof. Frank, Petitioner's expert, extensively discusses the importance of the price-limitation clause.

"the existing (original) complaint" (Rec. 2086, 2087). The District Court, despite the fact that the Petitioner merely sought documents which it had requested prior to the December 10, 1976 cutoff at the depositions of Ellis and Doyle, denied Petitioner's motion on the ground that it did not involve discovery initiated prior to December 10, 1976 and on the further ground that the "documents requested in Petitioner's Motion involved matters which exceed the scope of this lawsuit" (Rec. 2090, 2091).[28]

During the ninety-day period of limited discovery the Petitioner took the depositions of the principals of Texaco but those depositions were a farce, more notable for the questions Texaco's counsel instructed Texaco's officers not to answer than for the questions they condescended to answer (See footnote 20, supra). Moreover, as if the time limitation was not bad enough, the scope limitation was particularly damaging to the Petitioner. It prevented the Petitioner from taking depositions of such important witnesses as Buchanan of Petroco, Bunker Hunt of Hunt Oil Company, Monsieur Abderahim of Sonatrach and the Petitioner's expert oil economists. The depositions of those witnesses were specifically requested in Petitioner's "Motion to Reconsider Order Denying Extension of Time" (pp. 14, 15 of Doc. 243, Rec.).[29]

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28. The Court of Appeals affirmed the District Court solely on the basis that the District Court did not abuse its discretion in ruling that the motion had been filed out of time (632 Fed. 2d at pp. 551, 552).

29. The relevance of those witnesses was made clear throughout the record. *Buchanan* is the one who negotiated the Petroco contract with Petitioner; he was an experienced oilman who contracted to buy some of Petitioner's oil at $3.09 per barrel and who made extensive efforts to get the oil processed and thereby found out first hand about the boycott (see Petroco contract, Exhibit to Depo. of Icsel and Depo. of Musslewhite, pp. 182, 183, where he quotes Buchanan as stating that "the embargo was just too much . . . they had a freeze on this oil and everybody (we) tried talking with would just go through the paces . . ."; Clark Depo. pp.

C. Evidence of Offers of the Oil to Respondents

It is undisputed that the Respondents Exxon, Texaco, Shell and Sun were offered the Petitioner's oil, that all engaged in the parallel conduct of refusing to buy the oil, and that the only reason such Respondents gave for refusing to buy the oil was that the start-up price (the first year's price) was not competitive.[30] The other eleven Respondents, through affidavits filed by their responsible officers, denied that they had been contacted or offered the oil by Petitioner (see affidavits attached to Respondents' motion for summary judgment, Doc. 246).[31] However, one Charles Ragan who had been employed by the

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112, 113; Burns Aff., Doc. 260, Rec.). As to *El Din*, the record reveals that he was instrumental in helping negotiate the Sonatrach/Pan-Islamic contract and also attempted to sell the oil. He told T. Clark that "the American oil companies were trying to stop the Arabs from selling their crude oil . . . trying to squeeze Algeria for nationalizing their oil, trying to starve them to death" (Clark Depo., p. 455). *Bunker Hunt* had filed an anti-trust suit against some of these same Defendants concerning their alleged anti-trust activities in Libya (see copy of Hunt complaint attached to Fain's Affidavit, Doc. 260) and there is much evidence in the record about how the Libyan-Algerian situations were interrelated (e.g., Ragan memo, Appendix 9A, and Fain Affidavit, Doc. 260, Rec.). *Monsieur Abderahim* was the ranking officer of Sonatrach who negotiated the Sonatrach/Pan-Islamic contract and the relevance and importance of his testimony can be found in Musslewhite's deposition and the Geneva Arbitration papers (Rec. pp. 388-456).

30. *Shell*: Depo of Moore, pp. 60-67, Aff. of Moore, Rec. 2018-2022, concerning offer and refusal; Depo. of Moore, pp. 56, 62-64, 86, 87, 58 and 59 and answers to inter., Rec. 861, 874, re reason for refusal. *Exxon*: Depo. of Doyle, pp. 21, 23-30, Ellis, pp. 31-33, 37-58, Affidavit of Doyle, Rec. 1991-1993, concerning offer and refusal; Depo. of Doyle, pp. 27, 34, 35, Ellis, pp. 41, 51, 53, answer to interrogatories, Rec. 1341, re reason for refusal; *Texaco*: Depo. of Routhier, pp. 53-65, 83-86, Connor, pp. 45-53 concerning offer and refusal; Depo. of Routhier, pp. 55, 65, re reason for refusal; *Sun*: Affidavit of S. Van Dyck Fear, see 1075, 1076 and Doc. 246, re offer and refusal; and answer to interrogatories, Rec. 1090, re reason for refusal.

31. All of them who commented on the matter indicated they would not have purchased the oil, if it had been offered, for the same reasons given by Exxon, Shell, Sun and Texaco. E.g., *Gulf*, answer to interrogatory, Rec. 933; *Mobil*, answer to interrogatory, Rec. 1133-1135; and *Occidental*, answer to interrogatory, Rec. 2021.

Petitioner during the period of the boycott to attempt to sell the oil, wrote a memorandum documenting the sales contacts he, George Folkes of the Washington law firm of Corcoran, Foley, Youngman & Rowe and the other principals of Petitioner had personally made. That memorandum contained statements to the effect that all of the Respondents had been contacted, offered the oil and had it under consideration. Ragan tried to be a cooperative witness for the Respondents but he admitted when questioned by Petitioner's counsel, that the Ragan memorandum was correct and prepared by himself from information gained by himself or directly given him by Mr. Folkes or the other principals of Petitioner, such information having been soon thereafter recorded in the memo (for a detailed discussion of this evidence, see excerpts in Appendix 9B).[31a] The Court of Appeals refused to give the Ragan memo *any* credence asserting it was "untrustworthy" because Mr. Ragan testified that he prepared it in the most favorable light to Petitioner since he knew it was going to be presented to Sonatrach in an effort to get an extension of time in which to make the first liftings.[32] In addition, there was evidence, independent of the Ragan memo, that Tenneco, Getty and Amerada-Hess were contacted by principals of Petitioner.[33]

31a. Folkes was dead by the time discovery got underway in this suit, but Ragan testified that Folkes made considerable effort to sell the oil.

32. 632 Fed. 2d at pp. 559, 560. Indeed, the question of credibility seems to run in the other direction. Ragan played down, or by implication denied, the efforts of one Cordell Moore, former Interior Department official, on behalf of Petitioner. Perhaps this was done to protect Mr. Moore but, whatever the reasons, the Respondents procured an affidavit from Cordell Moore wherein he stated that:

> "I have received no compensation whatsoever from Pan-Islamic *nor have I attempted to negotiate the sale of any crude oil on their behalf.*"

However, one Van Dyck Fear, officer of Respondent Sun, swore by affidavit that Cordell Moore indeed did contact Sun Oil twice on behalf of the Petitioner (see Rec. 1074-1075). This obvious perjury on the part of one of Respondents' witnesses apparently did not concern the Court of Appeals at all.

33. See Appendix 13 for excerpts of this testimony.

D. Evidence That It Was Contrary To Respondents' Own Economic Interests To Refuse The Offer Of The Petitioner.

The Court of Appeals, in effect conceding that if the Respondents Exxon, Texaco, Shell and Sun had been offered and refused to purchase any of the oil covered by the very attractive price limitation clause[34] *summary judgment would have been precluded,*[35] *then proceeded to reach the astounding conclusion that there was no significant probative evidence that any of the oil covered by the price limitation clause was offered to the Respondents.*[36] *This is the most inaccurate statement by an appellate court that we have ever seen. We have included in Appendix 8B, excerpts from the testimony of the Respondents' witnesses, which, when considered with the testimony of the principals of the Petitioner,*[37] *this Court will see that this case is one wherein a per curiam reversal, at least as to Respondents Exxon, Shell, Texaco and Sun, is appropriate, much the same as in United States v. Con-*

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34. The Petitioner's contract called for the lifting of 80 million barrels in year one at $2.98 per barrel and 40 million barrels in each of years two through five at a price limited to sixty percent of the posted price. Appendix 8A, Prof. Frank's Affidavit, contains a discussion of why this price limitation clause made Petitioner's offer economically irresistible. Since the posted price between 1971 and 1976 rose from $3.60 per barrel to $17.50 per barrel, it is obvious that this price limitation clause would have resulted in a savings of millions of dollars for the Respondents.

35. 632 Fed. 2d at pp. 559-561.

36. 632 Fed. 2d at p. 564.

37. In Appendix 8B, the testimony and statements of the principals of the Respondents referring to the "letter dated May 14, 1971" concerns the option with the price limitation clause (See Exhibit 1 to Prof. Frank's Affidavit, App. 8A). Respondents had very vague recollections of the discussions with Petitioner's principals. Connor's Affidavit, Doc. 246; Routhier Depo., pp. 54, 55; Ragan Depo., p. 62; Doyle Depo., p. 30. The testimony of the principals of Petitioner, clearly suggests that the oil covered by the price limitation clause was discussed and offered. Icsel Depo., pp. 81, 333, 334; Musslewhite Depo., pp. 92, 93, 633, 656; Godwin Depo., pp. 126, 127. See excerpts in Appendix 8B.

tinental Oil,[38] *Norfolk*[39] and *U.S. v. Diebold, Inc.*[40] [41]

Aside from the extreme attractiveness of the Petitioner's offer because of the price limitation clause (see discussion, infra), if the offer of the Petitioner was just judged solely on the basis of the start-up price,[42] there is significant probative evidence that Petitioner's price was attractive: (1) principals of Petitioner testified that the start-up price offered Respondents was economically attractive;[43] (2) Petitioner's expert, Prof. Frank, swore by affidavit that the start-up price offered by Petitioner to Respondents was attractive;[44] (3) Prof. Frank's affidavit, newspaper articles and other publications, and the testimony of Petitioners' principals, established that the posted price of Algerian crude, at the time that it was being offered to the Respondents at no more than $3.12 per barrel, was $3.60 per barrel;[45] (4) there was substantial evidence from both the Respondents' officers and Petitioner's principals that the Respondents Exxon, Shell, Texaco and Sun had been told that the price was negoti-

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38. 377 U.S. 161 (1964).

39. *Supra.*

40. and 41. 369 U.S. 654 (1962). The Court of Appeals also rationalized that Petitioners had *not contended* in the District Court that the oil covered by the price limitation clause was offered to Respondents. (632 Fed. 2d at p. 564). But Petitioner filed Prof. Frank's affidavit (Appendix 8A) and it contains an *extensive* discussion of the price limitation clause. Although given the opportunity to respond to Prof. Frank's affidavit, Respondents chose not to do so. In fact, the Respondents, *at no time in the District Court,* contended that it was *not* offered the oil covered by price limitation clause (See entire record).

42. The price at which the oil was initially offered to the Respondents was between $3.00 and $3.12 per barrel f.o.b. Algeria.

43. Icsel Depo., pp. 245, 246; T. Clark Depo., pp. 194, 195; Wantschek Depo., pp. 66, 67, 232, 242, 264, 290 and 321; the Ragan Memo, Appendix 9A and Ragan Depo., p. 262; and Musslewhite Depo., pp. 110-112, 135, 261 and 259.

44. Appendix 8A, pp. 7, 8.

45. Appendix 8A (Prof. Frank's Affidavit); Appendix 10 (Fain's Affidavit with newspaper articles attached); Appendix 9A (Ragan Memo); Mobil, Rec. 1140.

able;[46] and that Petitioner did indeed secure from Sonatrach a reduction in the start-up price, to a level less than what Respondent's various estimates of the market price averaged out to be;[47] (5) the CIF prices (cost of crude delivered to Respondents' American refineries), asserted by Respondents for comparable crude, exceeded Petitioner's offered FOB price (cost of crude at Algerian ports) plus the costs of freight, insurance and other costs of delivery estimated by Petitioner's principals, thus establishing that Petitioner's offered start-up price was attractive;[48] (6) the contract between Petitioner and Petroco, calling for a sale at $3.09 per barrel, and offers and negotiations between Petitioner and non-Defendants and other information concerning similar transactions, including quotations in newspapers and other documents, are relevant to the ultimate issue of the market value of Petitioner's offer.[49]

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46. Moore Depo., pp. 64-67; Routhier Depo., pp. 55, 64, 65; Connor Depo., pp. 45, 51; Doyle Depo., pp. 35, 66; Ellis Depo., pp. 42-44; Affidavit of Moore, Rec. 872, 2019 and Affidavit of Connor, Doc. 246.

47. Re reduction of price to as low as $2.82 per bbl., Appendix 11, Burns Affidavit; T. Clark Depo., pp. 57, 123, 124, 145, 298, 312, 11, Burns Affidavit; T. Clark Depo., pp. 57, 123, 124, 145, 298, 312, 330, 388; Icsel Depo., p. 191; Musslewhite Depo., pp. 44, 123, 124, 133, 206, 208, 209, 212, 213, 406, 422, 467, 1098, 1099, 1100, 1101, 1106, 1192, 1193, 1194, 1225; Godwin, p. 140. Re the start-up price Respondents admitted attractive, the average was $2.84 per bbl.; see affidavits attached to Doc. 246, Supp. Rec. where price estimates are given.

48. Shell Oil Company indicated that the cost to it in May and June, 1971, of crude comparable to Algerian crude, namely "South Louisiana" crude, laid down at its Houston refinery, would be $3.815 per barrel; (Rec. 2020 and Rec. 2021); however, Petitioner's witnesses testified that a calculation had been made of the CIF costs (meaning the costs of transportation, insurance and other expenses) for delivery of Algerian crude to the U.S. and that the total cost of delivered Algerian crude was $3.30 to $3.40 per barrel (Musslewhite Depo., pp. 94, 95) which would be about $.42 per barrel *less* than the South Louisiana crude delivered to Shell in Houston.

49. Petroco Contract: See Burns Affidavit, App. 11; Ragan Depo., Exh. 1, pp. 9, 22, 23, 141-145; Icsel Depo., Exh. 4, pp. 172-175, 209, 210; Exhs. 6, 7(a)-7(g), 226, 232; T. Clark Depo., pp. 101-118, 331,

As to the attractiveness of the Petitioner's offer when the entire contract is considered, that is the oil covered by the price limitation clause, it is quite clear that the offer of the Petitioner was so attractive that as a matter of law, it was *not* in Respondent's own economic interests to refuse it. Professor Frank, Petitioner's eminently qualified oil economist expert, testified that "it is questionable whether similar large quantities of crude oil comparable to Algerian could have been obtained in the summer of 1971, from Algeria or other sources, with price guarantees as attractive as those negotiated by Pan-Islamic" (Doc. 268, Appendix 8A). Professor Frank's opinion was never contradicted; the Respondents offered absolutely no evidence to rebut it (see the entire record).

E. Aside From The Conscious Parallelism Doctrine, There Is Significant Probative Evidence From Which Acquiescence In The French Boycott Could Reasonably Be Inferred.

The Court of Appeals ignored, refused to accept or unsucessfully attempted to explain away the following evidence: (1) that none of the Respondents entered into a new contract for the purchase of Algerian oil (including spot purchases) directly with Sonatrach during the an-

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333, 312, 316; Musslewhite Depo., pp. 115-117, 120-122, 143, 164-195 and 222; also see negotiations with: *Commonwealth, Gulf States Utilities, Japanese, Manbanafit* (Hinnenberg), *Cirillo Brothers, Jeffrey Miller, Car-ro Corp., MRH, Rudolph Kroning and Coastal States.* Also see rapid price increases admitted by Respondents: Thomas D. Jenkins of Occidental, in his affidavit (Document 246), revealed how a drastic price increase of almost 50%, from $1.92 per barrel in 1970 to $2.90 per barrel on February 9, 1971 had occurred in purchases Occidental had made from Algeria; T. Andrews of Standard Oil Company of Indiana swore that the market price during that period of time was between $2.80 and $3.00 per barrel (Doc. 246 of Supp. Rec., Aff. of T. Andrews). The Exhibits to Fain Affidavit (See Document 260, Supplemental Record) contain a number of publications that discuss price and indicate that the Petitioner's price was attractive, particularly how on April 3, 1971, the price of Libyan oil was set at $3.45 per barrel and Paris indicated the Libyan accord is a "solid base for Franco-Algerian accord".

nounced boycott period (Feb. 24, 1971 to June 30, 1971); yet, many of the Respondents entered into substantial new contracts directly with Sonatrach and made spot purchases directly from Sonatrach *both before and after* the boycott period;[50] (2) that a boycott of Algerian oil was initiated by the French national oil companies, that a call for participation by all oil companies was issued through the major press throughout the world, and that the Respondents were aware of the French-Algerian dispute,[51] (3) Icsel, a principal officer of Peti-

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50. *Texaco*: Routhier Depo., pp. 25, 26, 33-36; Connor Aff., Doc. 246; ans. to inter., Rec. 129, 130; *Exxon*: Rec. 1326; Depo. of Ellis, pp. 33-37, 56-63, 66; Rec. 1336, Rec. 1991-1993, Aff. of Doyle; Exxon purchased none during boycott but, ironically, purchased almost the same quantity, for the same term, as Petitioner had purchased, *after* the boycott ended; *Shell*: Rec. 806, 845; *Sun*: Rec. 1062, 1063; *Phillips*: would not say, Rec. 933 and Aff. of Stone, Doc. 246, Supp. Rec.; *Mobil*: Rec. 1118, Aff., Doc. 246; *Occidental*: only purchases made just before boycott and after, Supp. Response to Interrogatories, Rec. 1493-1495; Rec. 1152, 1162, 1167; *Getty* and *Atlantic Richfield*: refused to say, Rec. 1188 and 1223, respectively; *Standard of Indiana* and *Amoco*: Rec. 1371; *Tenneco*: Rec. 1448, 1449; *Gulf*: Rec. 971, Aff. Doc. 246; *Continental*: would not say for certain, Doc. 153, pp. 131, 63 and 64. Sonatrach arbitration papers filed at arbitration proceedings between Sonatrach and Petitioner established clearly that none of the Respondents purchased Algerian oil during the boycott (Rec. 435, 436).

51. *See testimony of Petitioner's principals that boycott existed*: Godwin Depo., pp. 249, 250, 252, 257; T. Clark Depo., pp. 55, 56, 92, 93, 98, 112, 113, 116, 311, 365, 388, 389, 379, 380, 409-413, 449, 455, 543 and 546; Icsel Depo., pp. 342, 343, 344, 345; Musslewhite Depo., pp. 182, 185, 191, 222, 327, 328, 349, 374, 384, 489-510, particularly 499, 511-517, 539, 597, 602, 1213, 1215-1219, 1225, 1443, 1445; the Ragan Memo *concerning the existence of the boycott and the geopolitical considerations affecting it*, Appendix 9A; *the newspaper articles and other documents attached to Fain's affidavit containing the call for the boycott and its beginning and ending dates*, Appendix 10, including Feb. 24, 1971, article that Algeria took 50% of the French oil on February 24, 1971 thus precipitating the French inspired boycott; the *Wall Street Journal*, April 27, 1971, that "French officials said major international oil companies sounded out in Paris had given their assurances of their support to the French boycott"; the June 22, 1971 edition of the *Wall Street Journal* that "(t)he French companies have boycotted Algerian oil for several weeks and the boycott has been supported by most of the oil industry"; and the *New York Times*, July 1, 1971, that France and

tioner, testified that Routhier, Texaco's officer, told him that if any of the other major oil companies purchased a barrel of Petitioner's Algerian oil then Texaco would buy the rest; the Court of Appeals refused to give this statement any weight or draw any inference from it, theorizing it could have been made "casually"; but there is nothing in Icsel's testimony to indicate that the remark of Routhier was "casual";[52] (4) the similarity of interests of the Respondents here is crucial circumstantial evidence; the fact that the Respondents were major international oil companies with equity ownership in oil and facilities around the world and with dealings with the French national oil companies, obviously made all of them sensitive to the nationalization of oil properties anywhere in the world;[53] *The Respondents offered not one shred of evi-*

Algeria had reached an accord, thus indicating the boycott had ended; and see other documents contained in Doc. 260, Supp. Record; *the testimony re awareness of French-Algerian dispute*: Doyle Depo., pp. 32, 55, 71-73, 86, 97, 98; Ellis Depo., pp. 44, 45, 46; Routhier, p. 27; Musslewhite Depo., p. 651; Icsel Depo., pp. 82, 83; Moore Depo., pp. 51, 52, 54, 55; Connor Depo., pp. 28, 29; and *the official statement of Sonatrach before arbitration panel in Geneva, placed in evidence by Respondents*, Rec. 388-456.

52. 632 Fed. 2d at pp. 557, 558. See Appendix 12, which contains detailed excerpts of Icsel's and Musslewhite's testimony concerning Routhier's statement. Routhier did not deny that he made such statement, nor did he state that it was made casually. See entire Depo. of Routhier.

53. See Ragan Memo which discusses the geopolitical common interests of the "club" (Respondents); at least this part of the Ragan Memo is admissible; also see *answers to interrogatories where Respondents admit (or fail to deny) involvement in all phases of the oil industry*: Gulf (Rec. 919), Shell (Rec. 841), Sun (Rec. 1051), Continental Oil Company (Doc. 153, p. 17 of the Supp. Rec.), Mobil (Rec. 1114), Texaco (Rec. 1287), Exxon (Rec. 1323), Standard Oil of Indiana (Rec. 1359); *Amoco admitted that it was involved in four of the five phases* (Rec. 1359); *the rest of the Appellees*, Tenneco (Rec. 1429), Occidental (Rec. 1148), Getty (Rec. 1184, 1185), Atlantic-Richfield (Rec. 1219, 1220) and Amerada/Hess (Rec. 1253, 1254), *though not affirmatively denying involvement in the five phases, refused to discuss their involvement.* All of the Appellees, with the exception of Continental (Doc. 153), refused to reveal, though requested by Appellant to do so through interrogatories, their dollar volumes in each of the phases of the oil business: Texaco (Rec.

dence to indicate that any of the Respondents did not have similarity of interests with the other Respondents; (5) the manner of dealing of the Respondents, also a relevant consideration in conspiracy cases, makes pertinent the undisputed evidence discussed above that the sole reason Respondents gave for refusing to buy was that the start-up price was too high; yet none of the Respondents *attempted to negotiate* the price, even though they were aware that the price was negotiable (see footnotes 30, 46 and 47, *supra*); moreover, the principals of Petitioner testified that the Respondents would appear interested and not initially perturbed about the price but then later abruptly decline the oil on the basis of price;[54] (6) also, the evidence discussed above of the parallel refusal to deal on the part of Respondents, and the conflicting evidence as to whether

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1308, 1309); Amerada/Hess (Rec. 1272, 1273) *answers to interrogatories concerning involvement in the London and New York Policy Groups, organizations designed to deal with international situations affecting the members' foreign crude oil*: Respondent Gulf (Rec. 947-950), Respondent Phillips (Rec. 1021, 1022), Respondent Mobil (Rec. 1122-1123); (Exxon listed as one of those present at the group meetings the man Blair said was the architect of many of the anti-trust arrangements in the Near East, John J. McCloy, Jr.) (Rec. 1333); others, Texaco (Rec. 1296, 1298), Tenneco (Rec. 1439, 1440), Occidental (Rec. 1158), Getty (Rec. 1194-1195), and Atlantic Richfield (Rec. 1229-1230) refused to say whether or not they were a member of either Group; the one Respondent who made an almost reasonable effort to respond to Petitioner's interrogatories was Continental and its responses demonstrated how it and many of the other Respondents were interrelated all over the world, including North Africa (See App. 14, re excerpts from Continental's answers revealing many joint ventures with the other Respondents, involvement with the French and subsidiaries in Libya and Algeria; also see Doc. 153, Supp. Rec.); see also Ragan Memo, App. 9A; Prof. Frank's Affidavit, App. 8A; testimony of Moore, Depo., pp. 13-16, 49, 71, 72, 73; Ellis Depo., pp. 26, 27, 72; documents attached to Fain Affidavit, particularly historical comments in *The Control of Oil* by John Blair, former counsel for the Anti-Monopoly Sub-committee (Doc. 260 of Supp. Rec.); Routhier Depo., pp. 15, 16, 36 about Texaco's involvement with Elf, French owned oil company, and in North Africa; Doyle Depo., p. 86, concerning Exxon's involvement in Libya, a similar geopolitical situation to that of Algeria.

54. T. Clark Depo., pp. 148, 149; Godwin Depo., pp. 123-125; Musslewhite Depo., pp. 443, 444, 446, 825-973.

or not it was contrary to the economic interests of Respondents to refuse the oil (see footnotes 30, 34, 42-49, *supra,* and App. 8A, Prof. Frank's affidavit) are relevant considerations in a circumstantial conspiracy case; and (7) the Petitioner's principals gained the impression that, based upon their efforts to sell the oil around the world and their dealings with the Respondents, the Respondents were honoring the French boycott.[55]

BASIS FOR FEDERAL JURISDICTION IN THE DISTRICT COURT

The basis for federal jurisdiction in the District Court was the anti-trust laws of the United States, particularly Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 and 2, and Section 4 of the Clayton Act, 15 U.S.C. ____. (See Appendix 7).

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I.

A Granting of Certiorari in This Case is Absolutely Essential if Private Anti-trust Litigation is to Survive.

In the celebrated *Poller* case, this Court held that "summary procedure should be used sparingly in complex anti-trust litigation where motive and intent play leading roles and the proof is largely in the hands of the alleged conspirators and hostile witnesses thicken the plot" (368 U.S. at 473). Six years later the Supreme Court rendered its decision in *Cities Service,* and that decision has been construed by many Courts, including the Court of Appeals in this case, as a substantial retreat from *Poller.*

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55. Ragan Memo, App. 9A, ("The majors' interests are intertwined throughout the world, and to protect themselves they must protect one another, particularly against outsiders and the governments of producing countries . . . Through this 'club' the actions of the French are definitely having a temporary adverse effect on the current efforts to sell Algerian crude on the world market . . .") and see citations to record in footnote 51, *supra.*

Using *Cities Service* as a springboard, the Fifth and other circuits have handed down a series of decisions which have progressively increased the burden upon the plaintiff-opponent to a motion for summary judgment in a private anti-trust suit.[56]

The cancerous threat to the right of trial by jury in civil anti-trust suits has grown to the point that, with the Court of Appeals' decision in this case, if left to stand, such right will be virtually terminal.

It is difficult for us to believe that this Court intended in *Cities Service* to repudiate the standards of review in summary judgment cases it reaffirmed so strongly in *Poller*. There it was said that the proponent of a summary judgment must show that "there is no genuine issue as to *any* material fact . . . that (the proponent) is entitled to judgment *as a matter of law* . . . (that) it is *quite* clear what the truth is . . . (and proponent must produce) conclusive evidence supporting (proponents') theory" (368 U.S. at pp. 467, 472, 473). In making the determination whether the proponent satisfied these burdens the appellate court must examine "the record . . . in the light *most favorable* to (the opponent of the summary judgment)."[57] *Poller* has been cited with approval many

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56. *Aviation Specialties, Inc. v. United Technologies Corp.*, 568 F.2d 1186 (5th Cir., 1978); *Solomon v. Houston Corrugated Box Co.*, 526 F.2d 389 (5th Cir. 1976); *Scranton Construction Co. v. Litton Industries Leasing Corp.*, 494 F.2d 778 (5th Cir. 1974), cert. denied, 419 U.S. 1105, 95 S.Ct. 774, 42 L.Ed.2d 800 (1975); *Aladdin Oil Co. v. Texaco, Inc.*, 603 F.2d 1107 (5th Cir. 1979); *Daniels v. All Steel Equipment, Inc.*, 590 F.2d 111 (5th Cir. 1979); *American Telephone & Telegraph Co. v. Delta Communications Corp.*, 408 F. Supp. 1075 (S.D. Miss. 1976), *aff'd* 579 F.2d 972, *modified in part*, 590 F.2d 100 (5th Cir. 1978); cases from other circuits include: *Natrona Service, Inc. v. Continental Oil Co.*, 598 F.2d 1294 (10th Cir. 1979); *Harvey v. Fearless Farris Wholesale, Inc.*, 589 F.2d 451 (9th Cir. 1979); *Lamb's Patio Theatre v. Universal Film Exchanges, Inc.*, 582 F.2d 1068 (7th Cir. 1978).

57. In *Norfolk* the Court stated that for the defendants to be entitled to a summary judgment the conspiracy must be "conclusively disproved by pretrial discovery" (394 U.S. at p. 704).

times by this Court, the courts of appeals and the district courts, the most recent, ironically, being by the Fifth Circuit.[58] *Poller* reaffirms many older decisions of this Court and has itself been reaffirmed by many subsequent decisions, e.g., *Sartor v. Arkansas Natural Gas Corp.*[59] (hereinafter *Sartor*); *Kennedy v. Silas Motor Co.*;[60] *Arenas v. United States*;[61] *Klor's, Inc. v. Broadway-Hale Stores Inc.*;[62] *U.S. v. Continental Oil Co., supra; Fortner Enterprises Inc. v. U.S. Steel Corp.*;[63] *U.S. v. Diebold, Inc., supra* (hereinafter *Diebold*); *White Motor Co. v. U.S.*;[64] *Norfolk;* and *Agosto v. Immigration & Naturalization Service.*[65]

Yet, in *Cities Service,* the Court stated that where the proponent of the summary judgment establishes an inference approximately equal to an inference in favor of the opponent "the probative force" of the parallel refusal to deal is negated.[66] [67]

The Court of Appeals in this case seized upon the above statement, coupled with *Cities Service* instruction that the plaintiff must produce significant probative evidence to avoid summary judgment,[68] to justify some powerful rationalizations. The Court of Appeals has taken the con-

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58. *Derrick v. Bralorne Resources, Ltd.*, 639 Fed. 2d 196, 197 (5th Cir. 1981).

In *Diebold* the Court stated:

> "In any event both findings represent a choice of inferences to be drawn from the subsidiary facts contained in the affidavits, attached exhibits, and depositions submitted below. On summary judgment the inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the motion." (369 U.S. at 655).

59. 321 U.S. 620 (1944).
60. 334 U.S. 249 (1948).
61. 322 U.S. 419 (1944).
62. 359 U.S. 207 (1959).
63. 394 U.S. 495 (1969).
64. 322 U.S. 253 (1963).
65. 436 U.S. 748 (1978).
66, 67. 391 U.S. at p. 280, but *cf., Continental Ore,* 370 U.S. at p. 696.
68. See e.g., 632 Fed. 2d at p. 554.

clusory denial affidavits of Respondents at *total* face value;[69] from there shifted the burden of proof and producing evidence on all ultimate and subsidiary issues *totally* to the opponent of the summary judgment;[70] thence thrust upon the poor opponent the overriding burden of anticipating all possible objections to the evidence he offers in the district court (in other words, by virtue of filing a one page affidavit, the proponent gains the luxury of lying behind the log and ambushing the opponent in the appellate court);[71] also shifts to opponent

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69. It has done this despite the self-established conflicts in the Respondents' evidence (see footnote 32). This Court has more than once emphasized that "the mere fact that the witnesses are interested in the results of the suit is deemed sufficient to require the credibility of his testimony to be submitted to the jury as a question of fact." *Sartor*, 321 U.S. at p. 729; also see *Sonnetheil v. Christian Moerlein Brewing Co.*, 172 U.S. 401, 408, 19 S.Ct. 233, 43 L.Ed. 492, 495.

70. On the crucial general issue of whether the Respondents' refusal to buy was contrary to their economic self-interests the Court of Appeals apparently conceded that there existed a fact question on that issue if it could be assumed that the oil covered by the price limitation clause had been offered, but the Court took the position that, although it was undisputed that Petitioner offered *some* of its oil to Respondents Exxon, Shell, Texaco and Sun, and Respondents did not thereafter contend or attempt to show that they were *not* offered any of the oil covered by the price limitation clause, the Petitioner still had the burden of producing significant evidence that such oil was expressly offered (632 Fed. 2d at p. 564). This is not only contrary to the general principles enunciated in *Poller*, *Norfolk*, *Sartor* and the other cases cited above, but is directly at odds with *Adickes v. S. H. Kress and Company*, 398 U.S. 144 (1970), a case where the Court specifically held that it is the burden of the *proponents* of a summary judgment, *not the opponents*, to clear up all uncertain issues and sub-issues and to conclusively negate every fact issue that could possibly preclude judgment as a matter of law for the proponent.

71. The Court of Appeals rejected consideration of the newspaper articles announcing the boycott as proof of an invitation to enter into a boycott because Petitioner "did not allege before the trial court nor did it argue to this Court, the newspaper announcement of the French companies' threat served as the medium by which alleged co-conspirators coordinated their efforts" (632 Fed. 2d at p. 557). This just points up why summary judgments are so dangerous. In an actual trial the Respondents would have been required to object to all evidence as it came in and state the grounds there-

the burden of expressly mentioning in the district court all possible legal theories upon which he hopes to rely, or else waive them;[72] and then, lastly, proceeds to arrogate unto itself the powers of the jury and decides all conflicting inferences in favor of the proponent.[73]

We just do not believe that *Cities Service* permits, or was intended to permit such an emasculation of Rule 56 and *Poller*. We earnestly urge the Court to grant writ, clarify *Cities Service* and apply a tourniquet before the right of trial by jury, "the hallmark of even-handed justice", bleeds to death before our very eyes.

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for, giving the Petitioner the opportunity to meet such objections, if valid, with alternative or limiting offers or other proof. The Court of Appeals requires the opponent to a summary judgment to anticipate every possible objection to its evidence even though they are not made in the district court, but the Court of Appeals offers no citation of authority for this radical new approach to summary judgment proceedings.

72. Moreover, one reason the Court of Appeals gave for not considering the value of the price limitation clause in Petitioner's contract with Sonatrach was because "[i]n its arguments to the district court, Pan-Islamic failed to indicate that it believed a factual issue existed as to whether the escalation (price-limitation) clause benefits were included in the offer to the (Respondent) companies." (632 Fed. 2d at p. 564). The Court of Appeals thus places the burden upon the opponent to a summary judgment motion, even though the record may be voluminous (over "3500 pages of deposition testimony, not to mention numerous affidavits and exhibits"), to expressly state in the trial court each legal theory upon which it relies or else waive them. How this position can be taken in the face of *Adickes*, *Poller*, *Sartor*, *Norfolk*, and the other decisions of this Court, is beyond us. Actually, it is the other way around; since Respondents failed to raise this issue in the trial court, they waived the issue or at the least this case should be remanded so that the trial court will have the opportunity to consider the issue. *Czaplicki v. Hoegh Silvercloud*, 351 U.S. 525 (1956).

73. For example, with respect to the testimony of Icsel that an officer of Texaco (Routhier) told him that if any of the major oil companies bought the Algerian oil, Texaco would buy the rest, the Court of Appeals inferred that the remarks were "casually" made (even though there is nothing in Icsel's or Routhier's testimony to justify such an inference) (but see Appendix 12). Resolving such inferences against the opponent is unquestionably violative of *Poller*, *Sartor*, *Norfolk*, *Adickes* and the other cases cited above.

II.

Writ Should Be Granted Because There Is A Quantum Of Evidence In This Case Which Far Exceeds The Significant Probative Evidence Which Is Necessary To Preclude Summary Judgment.

We have a purpose in mind in utilizing most of the space permitted by this Court for petitions for writ with the statement of the facts and evidence, rather than with a lengthy argument of the law. The evidence in this case is so overwhelmingly suggestive of anti-trust conduct that it need not be recounted in detail.

The crux here is that *Cities Service* is negatively dispositive of this case in that the reasons given by this Court for not reversing the summary judgment in that case require the reversal of the summary judgment in this case. *Cities Service* involved a very similar situation. Waldron, the Plaintiff, had a contract with the national oil company of Iran for the purchase of Iranian oil and tendered the oil to the major oil companies and Cities Service. It was undisputed that at that time Cities Service was not a major oil company and did not have similarities of interest with the major oil companies. Moreover, Waldron was working directly with Cities Service and himself testified that Cities Service's interests coincided, rather than conflicted, with his interests, and were contradictory or in conflict with the interests of the major oil companies. This was discussed by this Court in these terms:

> Petitioner himself consistently argued that *Cities interests in this situation were directly opposed to those of the other defendants. The others had large supplies of foreign oil; Cities did not. The others allegedly were members of an international cartel to control foreign oil; Cities was not. The others were interested in re-establishing the status quo prior to nationalization; Cities was not. . . . it is much more plausible to believe that Cities' interests coincided, rather than conflicted, with those of petitioner.* (391 U.S. at pp. 279, 285, emphasis ours).

The Court, in affirming summary judgment for Cities against the Plaintiff, went to the heart of the matter and pointed out why *Interstate Circuit* was inapplicable to *Cities Service,* and by converse reasoning why *Interstate Circuit* is controlling of this case, thus:

> "The reason that absence of direct evidence of agreement in *Interstate* was not fatal is that *the distributors all had the same motive to enter into a tacit agreement.* . . . (391 U.S. at 287, emphasis ours).

In this case it is undisputed that the Respondents all had a similarity of interests, considered so crucial in *Cities Service.* Ragan's memo[73a] discusses how the major oil company Respondents all had a common interest to forestall nationalization of western oil interests in North Africa and the Middle East. In addition, the evidence of value is certainly sufficient to create a fact issue; the lay opinions of the principals of Petitioner are admissible and relevant. See *Sartor; Home Insurance Co. v. Tydal,* 152 Fed. 2d 309 (5th Cir. 1936) reh. den. 157 Fed. 2d 851; *Ruude v. U.S.,* 256 Fed. 2d 460 (Cir. Ct. 1958) cert. den. 358 U.S. 817 (1959). The posted price of $3.60 per bbl. is relevant.[74] The market quotations mentioned by Prof. Frank, attached to Fain's affidavit and by others such as Burns (Petroco contract) are relevant. *Sartor, Cities Service* and *Hickok v. G. D. Searle & Co.,* 476 F.2d 444 (10th Cir. 1974). Certainly the uncontradicted opinion

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73a. Ragan's memo is unquestionably admissible under Rule 803(6) as when applied to the testimony in Appendix 9B. See, e.g., *U.S. v. Russo,* 480 F.2d 1228 (Mich. C.A., 1973) cert. den. 94 S.Ct. 915, 415 U.S. 1157, 39 L.Ed. 109. See also *U.S. v. Wycoff,* 187 F.2d 886 (C.A. Ind., 1951); *U.S. v. Ullrich,* 580 F.2d 765 (5th Cir. 1978) reh. den. 589 F.2d 1114; and *U.S. v. Evans,* [illegible] F.2d 455 (5th Cir. 1978) cert. den. 99 S.Ct. 200, 439 U.S. 870, 58 L.Ed. 182.

74. This Court noted that "Waldron . . . allegedly succeeded in obtaining a contract to purchase 15,000,000 metric tons of crude oil from (NIOC) the company formed to take over Anglo-Iranian's nationalized properties, over a five-year period at a rate substantially less *than the then current posted price for Persian Gulf oil*" (391 U.S. at p. 260) and considered this to establish that Waldron's offer was attractive (*Cities Service,* 391 U.S. 279).

of Prof. Frank, Petitioner's expert, is not only relevant but controlling. See *Sartor*. Indeed in *Sartor* this Court stated:

> "It should be observed that the entire controversy here turns on questions of evaluation. The only issue relates to market price or value of plaintiffs gas at the time and place of delivery . . . it is doubtful whether summary judgment is warranted on any showing." (321 U.S. at pp. 623, 624).[75]

The evidence of the Respondents' business behavior is certainly relevant and important. *Theatre Enterprises* and *Norfolk*. It obviously is more than just a coincidence that many of the Respondents traded directly with Sonatrach either before or after the boycott period but that none of them traded directly *during* the boycott period and it is certainly intriguing why the Respondents did not attempt to negotiate price when they knew the price was negotiable. Mr. Icsel's testimony is not only relevant but constitutes significant direct evidence of conspiracy. *Agosto v. Immigration & Naturalization Service* and *Morrison v. Nissan*, 602 Fed. 2d 139 (4th Cir. 1979).[75a] And the newspaper announcements of the boycott, thus serving as an invitation to participate in anti-trust activity, are definitely admissible and relevant. *Cities Service*.[76]

In summary, the magnitude of the devastation wrought by the Court of Appeals' decision in this case is such, we respectfully submit, that this Court should step in, grant writ, and reaffirm the dedication of our judicial

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75. See also, *Rains v. Cascade Industries, Inc.*, 402 Fed. 2d 243 (3rd Cir. 1968); *Ortman v. Stanray Corp.*, 321 Fed. 2d 154 (7th Cir. 1967), and *Technograph Printed Circuits v. Methods Electric Inc.*, 356 Fed. 2d 442 (7th Cir. 1966) *cert. den.* 384 U.S. 1950 (1960).

75a. There, an employee named Jack, of one of the defendants made a statement deemed sufficient to create an inference of conspiracy. In *Interstate*, this Court held that "silence", when there is an opportunity to refute adverse testimony suggests that it cannot be truthfully refuted. The silence of Routhier, whose deposition was taken after Icsel's, is thus revealing.

76. In *Cities Service*, this Court pointed out that the Anglo-Iranian invitation to boycott was "publicly announced in the news media . . ." (391 U.S. at 278). Also see, *Dallas County v. Commercial Assurance*, 286 Fed. 2d 388 (5th Cir. 1961).

system to enforce the anti-trust laws. Boycotts are one of the most pernicious modes of restraining trade; that is why they are per se violations. And they have a particularly deliterious effect upon a small business.[77]

We know the Respondents will say that frivolous anti-trust suits, which are expensive to defend, should be vigorously weeded out at the trial court level and to do so would not only protect them from unwanted expenses but result in an economy of justice. But we were pleased to see this Court lay these arguments to rest in its fairly recent decision in *Reiter v. Sonotone.*

III.

Granting Of Writ Necessary To Correct Misstatement Of Law As To Liability Of Co-Conspirators Even If Not Offered Oil

The Ragan Memo constitutes probative evidence that all Respondents were contacted. Aside from the memo, we have outlined above the evidence of contacts of at least three other Respondents (Tenneco, Amerada-Hess and Getty).

In any event, we believe the law is clear that if a group of defendants have a similarity of interests (as per *Cities Service*) and the product is offered to one of them, it is not necessary to prove an offer to the others to hold them liable if they are a part of the conspiracy. *Continental Ore;*[78] *American Tobacco Co. v. U.S.;*[79] *Bogosian v. Gulf Oil Corp.*[80]

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77. *Klor's Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959); *White Motor Company v. U.S.*, 372 U.S. 291 (Sup. Ct., 1963). In *Klor's* this Court stated:

> "Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can by driving them out in large groups. In recognition of this fact the Sherman Act has consistently been read to forbid all contracts and combinations "which 'tend to create a monopoly,'" whether "the tendency is a creeping one" or "one that proceeds at full gallop." (359 U.S. at pp. 213, 214).

78. (370 U.S. at p. 699).

79. 147 Fed. 2d 93 (6th Cir.).

80. 561 Fed. 2d 434 (3rd Cir. 1977) cert. den. 434 U.S. 1086.

IV.

The Court Of Appeals' Incorrect Rulings On Discovery Are Of Such Significance As To Necessitate The Grant Of A Writ

The procedural errors in this case, in a cumulative sense, if left to stand would result in an anachronistic return to the narrow, unjust procedural applications of by-gone days.

The refusal to compel the answers to the interrogatories on the ground they were not proper as to form violates Rule 7 of F.R.C.P. The "motion" to compel was properly made orally at a recorded hearing.[81] It was also properly made in writing in the *Motion to Reconsider.*[82] As to the Exxon documents, *Riley v. U.S.*, 32 F.R.D. 230 (U.S. D.C., N.Y., 1962) indicated that there is no specific time

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81. *International Business Machine Corp. v. Edelstein*, 526 F.2d 37 (2nd Cir. 1975); *Alger v. Hayes*, 452 F.2d 841 (8th Cir. 1972); and *Witt v. Merrill*, 200 F.2d 285 (4th Cir. 1953).

82. Rule 8, F.R.C.P., provides that "[n]o technical forms of pleading or motions are required"; also see *McGarr v. Hayford*, 52 F.R.D. 219 (U.S.D.C., S.D. Cal., 1971); *Bumpus v. Uniroyal Tire Co., et al*, 392 F.Supp. 1405 (1975); *King v. Mordowanec*, 46 F.R.D. 474 (U.S.D.C., R.I. 1969); *Davis v. Yellow Cab Co.*, 35 F.R.D. 159 (U.S.D.C., E.D. Pa., 1964; hdnts 7, 8; and *Washington v. Cameron*, 411 F.2d 705 (U.S.C.A., D.C., 1963).

In *McGarr*, the Court stated:

> "Plaintiff relies upon Rule 7(b)(1), F.R.C.P., which provides that all motions 'shall state with particularity the grounds therefor * * *.' In United States v. 64.88 Acres of Land, 25 F.R.D. 88, 90-91 (D.C. Pa., 1960), the court stated that 'reasonable specification' of the grounds is sufficient to satisfy Rule 7(b)(1). *Moreover, if the court can comprehend the basis of the motion and deal fairly with it, technicalities ought to be avoided.*" (52 F.R.D. at p. 221)

The Court in *Littlejohn v. Shell*, observed:

> ". . . It is true that this representation was not in affidavit form by plaintiff in person but we think that the written representation by his lawyer, an officer of the Court, is in the spirit of Rule 56(f) under the circumstances. *Form is not to be exaulted over fair procedures.* We thus vacate the summary judgment in favor of defendants . . ." (483 F.2d at pp. 1145, 1146; emphasis ours).

limit for filing motions to compel and the Courts of Appeals. obviously erred in holding that the motion was filed out of time. As to discovery generally, this Court in *Cities Service* had this to say:

> "[I]n a proper case . . . a party might well have the right to demand discovery . . . from an opposing party dealing with activities during a period outside that covered by the subject matter of the lawsuit in order to provide some indication of the ramifications of the actions forming the basis of the complaint" (88 S.Ct. at p. 1597).

The improvidence of the limitations imposed by the District Court are epitomized by the District Court's abuse of discretion in giving the Petitioner an extension of 90 days, instead of the six months requested, and limiting the scope during that 90-day period to discovery initiated prior to December 10, 1976, instead of making it unlimited as requested. The latter restriction made it impossible to depose such important witnesses as Buchanan of Petroco, Bunker Hunt of Hunt Oil, Monsieur Abderahim and the Sonatrach people, and Petitioner's expert oil economists. The restriction as to time contravened such decisions as *Farkus v. Texas Instruments, Inc.*, 429 F.2d 849 (5th Cir. 1970) where it was stated:

> "Moreover, most of the delays are attributable not to plaintiff, but to the time spent by the Court in considering pending motions in the case. . . . Under these circumstances we cannot permit denial of leave to amend to be premised upon the delay between the commencement of action and the date on which the denial was entered." (429 F.2d at p. 851)

See also *Goldman v. Checker Taxi Co.*, 325 F.2d 853 (7th Cir. 1963), and *Umdenstock v. American Mortgage and Inv. Co.*, 495 F.2d 589 (10th Cir. 1974).[83]

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83. In *Murray v. City of Chicago*, 634 Fed. 2d 365, 366 (7th Cir. 1980).

V.

The Refusal Of The Amended Complaint On The Target Area Theory Is An Important Question Justifying The Grant Of Writ

The Court of Appeals failed to liberally construe the allegations in the amended complaint as it was required to do. Rule 15, F.R.C.P.; *Foman; Hospital Building;* and *Conley v. Gibson.*[84] Moreover, it gave an application to the "target area" theory which contravenes *Mandeville Island Farms v. American Crystal Sugar Co.*[85] and *Reiter v. Sonotone.* For these reasons write should be granted.

CONCLUSION AND PRAYER

We earnestly implore this Court to grant writ, clarify *Cities Service* vis-a-vis *Poller,* making clear that a proponent of a summary judgment motion still has the burden to conclusively show he has a right to a judgment as a matter of law, reaffirm that discovery should be liberally permitted and that amended pleadings should be broadly construed and authorized. Petitioner prays per curiam judgment and/or grant of writ as to all Respondents; in the first alternative as to Respondents Tenneco, Amerada-Hess, Getty, Shell, Exxon, Texaco and Sun; and in the final alternative as to Respondents Shell, Exxon, Texaco and Sun.

Respectfully submitted,

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84. 355 U.S. 41 (1957).
85. 334 U.S. 219 (1948).

CERTIFICATE OF SERVICE

I hereby certify that there were mailed this date, June 23, 1981, three (3) true and correct copies of the foregoing Petition for Writ of Certiorari to each of the following attorneys, being the only other attorneys of record:

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APPENDIX 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 74-H-463

PAN-ISLAMIC TRADE CORPORATION,
Plaintiff

v.

EXXON CORPORATION, ET AL.,
Defendants

MEMORANDUM AND ORDER

(Filed August 5, 1976)

On June 10, 1976 counsel for Plaintiff and Defendants in the captioned cause appeared before the Court for a pretrial conference to present argument on the following motions pending before the court:

1. Defendants' Motion for Partial Summary Judgment or Alternative Relief;
2. Defendant's (Shell Oil Company) Motion For Summary Judgment;
3. Defendants' Motion for Enforcement of Court Order of November 11, 1974 (requiring Plaintiff to file list of all contacts with Defendants);
4. Defendant's (Mobil Oil Corporation) Motion To Compel Plaintiff to File Further Answers to Interrogatories;

5. Defendant's (Mobil Oil Corporation) Motion to Compel Production of Documents;
6. Defendants' Motion to Enforce Compliance with Subpoena Duces Tecum for Deposition of Benton Musslewhite;
7. Plaintiff's Motion for Leave to File Amended Complaint;
8. Plaintiff's Motion to Add Commonwealth Oil & Refining Co., Inc. as a Defendant;
9. Plaintiff's Motion to Have Case Deemed a Complex Case;
10. Defendant Shell Oil Company's Motion for Security for Costs.

I.

The Court having considered some of the foregoing discovery motions, and the argument of counsel thereon, is of the opinion that there is a necessity to establish an orderly procedure to complete discovery in this case on the basis of Plaintiff's original complaint. At the time of the June 10 hearing this Court entered an order requiring compliance by Plaintiff with this Court's prior order of November 11, 1974, within thirty days. It is further ORDERED with respect to discovery as follows:

1. Defendants shall direct all discovery to Plaintiff within thirty (30) days from the date on which Plaintiff files a full and complete list of its contacts with Defendants in accordance with the terms and provisions of the prior order of this Court of November 11, 1974.

2. Plaintiff shall direct and complete discovery by December 10, 1976 (six months from June 10, 1976).

3. Plaintiff shall respond to Defendants' discovery inquiries as they are propounded and may not defer its responses until such time as Plaintiff has completed its own discovery.

4. All discovery by Plaintiff and Defendants as hereinabove provided shall be limited to the issues raised in Plaintiff's original complaint.

5. At the conclusion of each of the respective discovery periods as set out above, the Court will consider any Rule 37 motions to compel discovery which Plaintiff or Defendants think is insufficient at that time.

II.

The Court having further considered the motions for summary judgment filed by some of Defendants herein, and having considered Defendants' request at the June 10 hearing that they be permitted, upon the completion of discovery, to file motions for summary judgment directed to Plaintiff's original complaint, hereby ORDERS:

Defendants are granted leave to file with the Clerk of the Court, subsequent to the date for completion of discovery on December 10, 1976, motions for summary judgment directed to Plaintiff's original complaint. The Court waives the procedure set forth in the Special Order applicable to this Court dated August 28, 1975, and the revised Special Order applicable to this Court dated June 18, 1976, insofar as these summary judgment motions are concerned.

III.

The Court having further considered Plaintiff's Motion for Leave to File Amended Complaint, together with

arguments of counsel thereon, and supporting and opposing memoranda, hereby ORDERS:

Plaintiff's Motion for Leave to File Amended Complaint is DENIED.

Plaintiff seeks to file an amended complaint consisting of two counts, count one being substantially identical to the allegations made in the original complaint, and count two adding new allegations under the anti-trust laws (§ 4 and § 8 of the Clayton Act; § 1 and § 2 of the Sherman Act). Plaintiff alleges that Defendants have contracted, combined and conspired in restraint of trade and have monopolized and attempted to monopolize each of the following operational areas of the petroleum industry:

1. Exploration and reproduction of crude oil;
2. Transportation of crude oil;
3. Refining of crude oil;
4. Transportation of refined petroleum products; and
5. Marketing of refined petroleum products.

Plaintiff enumerates particular activities which it claims constitute a portion of the alleged contracts, combinations and conspiracies and asserts that these activities were part of a worldwide oil policy including Middle East, Libyan and Algerian oil. Plaintiff further alleges that these worldwide conspiracies in the five designated areas prevented Plaintiff from reselling its Algerian oil for which it had contracted with Sonatrach, and thereby caused Plaintiff's damage.

The discovery taken to date reveals, and Plaintiff does not dispute, that its sole business or undertaking in the oil industry was the attempted purchase and resale of Algerian crude oil per its contract with Sonatrach dated April 14, 1971. Prior and subsequent to that time Plaintiff had not engaged in the business of buying and selling crude oil, nor has it at any time been engaged in any of the operational areas of the industry in which it seeks to allege that Defendants have violated the antitrust laws.

The Court is of the opinion that Plaintiff has no standing to assert the claims alleged in count two of the proposed amended complaint.

Section 4 of the Clayton Act (15 U.S.C. § 15) provides a dual criteria that Plaintiff must meet in order to have standing. Plaintiff must show 1) an injury to its business or property; and 2) that the injury was by reason of defendants' violation of the anti-trust laws. Plaintiff fails to meet this standard.

Plaintiff does not contend that it is now, ever was or attempted to enter into the "business" in which it alleges Defendants have violated the anti-trust laws. Nor has Plaintiff demonstrated any intent or preparedness to expand its business into those areas. The only "business" Plaintiff was in was a single isolated contract for the purchase of Algerian crude oil from Sonatrach. Therefore, Plaintiff has not sufficiently shown that it had a "business" to be protected, as required by 15 U.S.C. § 15. See *Martin v. Phillips Petroleum Co.*, 365 F.2d 628 (5th Cir.), *cert. denied*, 385 U.S. 991 (1966).

Plaintiff contends, however, that even though it was not in the petroleum "business", its contract with Sonatrach was a property interest that was intended to be

protected by the anti-trust laws. Without determining whether or not this contract constitutes property within the meaning of 15 U.S.C. § 15, the Court is of the opinion that Plaintiff has failed to allege facts sufficient to show that the injury it suffered was *by reason of* Defendants' conduct, as required by 15 U.S.C. § 15. Plaintiff must show that the asserted conduct was the proximate cause of its asserted injury and that the damages are not merely incidental, consequential, or so removed from the injury as to be only remotely causative. See *Billy Baxter, Inc. v. Coca Cola Co.*, 431 F.2d 183 (2d Cir. 1970), *cert. denied*, 401 U.S. 923; *Daily v. Quality School Plan, Inc.*, 380 F.2d 484 (5th Cir. 1967); *Reibert v. Atlantic Richfield Co.*, 471 F.2d 727 (10th Cir. 1973); *Jeffrey v. Southwestern Bell*, 518 F.2d 1129 (5th Cir. 1975).

The Court is of the further opinion that Plaintiff is not prejudiced by the denial of its Motion for Leave to File Amended Complaint, whereas granting the motion would result in hardship and prejudice to the Defendants. Plaintiff is free to pursue its claim concerning Defendants' activities as they relate to Algerian crude oil under the original complaint. Granting Plaintiff leave to file the amended complaint, which expands the allegations to the five industries enumerated above, could conceivably require Defendants to make massive discovery regarding every phase of their worldwide oil operations. In view of Plaintiff's ability to pursue its claim as to Algerian oil, the only interest which it admittedly has in the oil industry, under the terms of its original complaint, and the prejudice that would result to Defendants by granting Plaintiff's motion, it is the view of the Court that justice does not require granting Plaintiff leave to amend.

The Court is aware, however, of the interest of both Plaintiff and Defendants in this ruling on Plaintiff's Motion for Leave to Amend Complaint, and is of the opinion that this ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal of such order may materially advance the ultimate determination of this litigation. Therefore, Plaintiff is granted leave to seek an interlocutory appeal on this issue pursuant to 28 U.S.C. § 1292(b).

The various other motions pending before the Court as numbered above which are not specifically ruled on herein are held in abeyance for further determination.

The Clerk will file this Memorandum and Order and provide counsel for all parties with a true copy.

Done at Houston, Texas, this 5th day of August, 1976.

/s/ WOODROW SEALS
United States District Judge

APPENDIX 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 74-H-463

PAN-ISLAMIC TRADE CORPORATION,
Plaintiff

v.

EXXON CORPORATION, ET AL.,
Defendants

MEMORANDUM AND ORDER

(Filed February 14, 1977)

This case is before the Court to consider the various pending motions. Out of an abundance of caution and in an attempt to be consistent in its treatment of all of the parties in this lawsuit, the Court hereby ORDERS:

1. Plaintiff's Motion to Reinstate its Cause of Action Against Defendants Getty Oil Company and Atlantic Richfield Company is GRANTED.

2. Plaintiff's Motion to Reconsider Order of Court Denying Plaintiff's Motion to Extend Time for Discovery is GRANTED in part. Plaintiff may continue discovery for (3) months from the date of this Memorandum and Order *but this discovery is limited to* those depositions which Plaintiff noticed by letter of October 13, 1976 to Defendants; i.e., only discovery which Plaintiff had initi-

ated prior to the December, 1976 cut-off date originally established by the Court.

The Court is of the opinion that Plaintiff has been dilatory in seeking discovery and extends the discovery date now reluctantly and only in an exercise of extreme caution so as not to deprive Plaintiff of its right to a hearing on the merits of its cause of action. The Court, however, recognizes that it possesses broad discretionary powers to impose sanctions on a party that fails to comply with its discovery orders and the Court will issue no further warnings to Plaintiff in this case. See *National Hockey League v. Metropolitan Hockey Club, Inc.*, ____U.S.____, 96 S.Ct. 2778 (1976) (per curiam); *Emerick v. Fenick Industries, Inc.*, No. 76-1298 (5th Cir., October 12, 1976).

3. Plaintiff alleges that it has filed motions to compel answers to interrogatories on which the Court has failed to rule. Although there are no such written motions on file in this cause, the Court has reviewed Plaintiff's interrogatories and Defendants' responses thereto and has determined that the issue is moot since the Court denied Plaintiff leave to file its amended complaint. The only questions to which Defendants objected were those which were beyond the scope of this lawsuit. Accordingly, Plaintiff's "motion" to compel answers to interrogatories is DENIED.

4. At the end of the three-month discovery period Defendants may re-urge their motions to dismiss and motions for summary judgment. Plaintiff may respond in writing to these motions within twenty (20) days after

they are re-urged and the Court will consider such motions at that time.

The Clerk will file this Memorandum and Order and provide all parties with a true copy.

Done at Houston, Texas, this 14th day of February, 1977.

/s/ WOODROW SEALS
United States District Judge

APPENDIX 3
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 74-H-463

PAN ISLAMIC TRADE CORPORATION, Plaintiff

v.

EXXON CORPORATION, ET AL., Defendants

MEMORANDUM AND ORDER

(Filed March 25, 1977)

This case is before the Court to consider Plaintiff's Motion for Inspection and Production and Copying of Documents. The Court has considered this motion and Defendant Exxon Corporation's opposition thereto, and hereby ORDERS:

Plaintiff's motion is DENIED.

The original cut-off date for discovery in this case was December, 1976. At Plaintiff's request, and out of an abundance of caution, the Court extended the cut-off date for three months, but limited it to only those depositions which Plaintiff had noticed prior to December, 1976. All other was precluded by this February 14, 1977 Memorandum and Order.

Further, the documents requested in Plaintiff's motion involve matters which exceed the scope of this lawsuit.

The Clerk will file this Memorandum and Order and provide all parties with a true copy.

Done at Houston, Texas, this 25th day of March, 1977.

/s/ WOODROW SEALS
United States District Judge

APPENDIX 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 74-H-463

PAN-ISLAMIC TRADE CORPORATION
Plaintiff

v.

EXXON CORPORATION, STANDARD OIL COMPANY OF NEW JERSEY, ATLANTIC RICHFIELD COMPANY, TEXACO, INC., GULF OIL CORPORATION, AMERADA HESS CORPORATION, SHELL OIL COMPANY, COMMONWEALTH OIL COMPANY, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, MOBIL OIL CORPORATION, PHILLIPS PETROLEUM CO., STANDARD OIL COMPANY OF INDIANA, AMERICAN OIL COMPANY, OCCIDENTAL PETROLEUM CORPORATION, INC. and GETTY OIL COMPANY,
Defendants

MEMORANDUM AND ORDER

(Filed January 3, 1978)

Pan-Islamic Trade Corporation ("Pan-Islamic") filed this action against sixteen oil companies claiming that it was prevented from selling Algerian crude oil which it had purchased from Sonatrach, the national oil company

of Algeria, to such Defendants and others, as a result of an unlawful worldwide boycott and conspiracy entered into by Defendants. Plaintiff contends that the alleged conduct of Defendants violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and amounted to tortious interference with contract rights. The case is now before the Court on the various motions for summary judgment filed by Defendants pursuant to Rule 56, Federal Rules of Civil Procedure, and Plaintiff's opposition thereto. The Court has considered these motions and supporting affidavits, the voluminous pleadings, deposition testimony, answers to interrogatories and the documents submitted by Plaintiff, and is of the opinion that there are no genuine issues of material fact present in this case and therefore that Defendants' motions for summary judgment should be granted.

Since Defendant Shell filed its motion for summary judgment on August 29, 1975 the Court has given Plaintiff every opportunity to conduct discovery and to demonstrate that there are contested fact issues present in this case.[1] However, from the minimal discovery taken by

1. This action was filed on April 4, 1974. At the June 10, 1976 pretrial conference before the Court, almost two years after suit was filed and almost ten months after Shell's motion for summary judgment was filed, Pan-Islamic requested an additional six months to conduct discovery prior to the Court's considering the pending summary judgment motion. This request was granted and the discovery cut-off date was extended to December 10, 1976.

On November 29, 1976 Plaintiff requested another six-month extension which the Court also granted on reconsideration giving Plaintiff another three months in which to complete discovery. Subsequently the Court ordered Plaintiff to submit by May 14, 1977 the affidavits of any individuals on whom it would rely in response to Defendants' motions for summary judgment. On May 16 Plaintiff filed two affidavits as attachments to its Opposition to Motions for Summary Judgment, together with its Summary of Evidence and Preliminary Memorandum. It also requested another

Pan-Islamic and the depositions of the principals of Pan-Islamic no fact has emerged which supports any of the claims against these Defendants.

PLAINTIFF'S COMPLAINT

The sixteen Defendants named in this lawsuit are Amerada Hess Corporation ("Amerada Hess"), Amoco Oil Company ("Amoco"), Atlantic Richfield Company ("Atlantic Richfield"), Commonwealth Oil Refining Company, Inc. ("Commonwealth")[2] Continental Oil Company ("Continental"), Standard Oil of New Jersey,[3] Exxon Corporation ("Exxon"), Getty Oil Company ("Getty"), Gulf Oil Corporation ("Gulf"), Mobil Oil Corporation ("Mobil"), Occidental Petroleum Corporation ("Occidental"), Phillips Petroleum Company ("Phillips"), Standard Oil Company (Indiana) ("Standard"), Sun Oil Company (Delaware) ("Sun"), Tenneco, Inc. ("Tenneco"), and Texaco, Inc. ("Texaco").

Pan-Islamic alleges that on May 14, 1971, it entered into a contract with Sonatrach, the national oil company of Algeria, for the purchase of specified quantities of crude oil and that as a result of the reckless, intentional and joint actions of the Defendants and their participation in an alleged world-wide conspiracy and embargo against Algerian crude oil Pan-Islamic was prevented from selling

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sixty days within which to obtain the affidavits of executives of Sonatrach and of Dr. Helmut J. Frank, a Professor of Economics at the University of Arizona. On July 18, 1977 Plaintiff filed the affidavit of Dr. Frank and no further evidence or affidavits have been submitted.

2. Commonwealth was dismissed as a party to this suit by Order of January 30, 1975 for lack of jurisdiction of the person.

3. On November 1, 1972 Standard Oil Company (New Jersey) changed its name to Exxon Corporation (See Answer of Defendant Exxon filed May 24, 1974.

the oil and has thereby incurred damages in excess of $10 million. Pan-Islamic also alleges that because of Defendants' conspiracy and intentional interference with its contract rights, two committed purchasers failed to honor their contracts with Pan-Islamic.

To support its conspiracy allegation, Plaintiff states that "during the course of its sales efforts" Pan-Islamic contacted representatives of "all of the Defendants named [in the complaint]," that in many instances fairly extensive negotiations were conducted, "but in each instance the Defendants ultimately refused to buy the oil from Plaintiff."

SUMMARY OF UNCONTESTED FACTS

No facts have been brought to the attention of the Court which would support any of the allegations made by Plaintiff in its Complaint. Not only is there a lack of admissible evidence as to the existence of a boycott of Algerian oil, but there is also a total lack of evidence of participation by any of the Defendants in such a conspiracy.

Pan-Islamic was organized on April 29, 1971 with $2,000 in capital by men who had no experience whatsoever in the oil industry and who had never done business together as a group: Erkan (Eric) Icsel, who became President of the corporation; Terrence Clark and Walter Wantschek, Vice-Presidents; Gerald Godwin, Secretary-Treasurer; and Benton Musselwhite, its attorney and a stockholder, (Clark Dep. at 174; Icsel Dep. at 19; Wantschek Dep. at 40; Godwin Dep. at 29; Musselwhite Dep. at 102-108).[4]

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4. References are to the deposition of the named individual and to the documents produced by Pan-Islamic.

In January or February, 1971 Mr. Jeffrey V. Miller, a Dallas crude oil broker, telephoned Eric Icsel requesting his help in obtaining forty million barrels of Algerian crude oil for sale to Miller's unspecified European client at a price under $3.15 per barrel. (Icsel Dep. at 27; Beech Dep. at 18). As a result of this phone call, Pan-Islamic was formed for the purpose of entering into a contract with Sonatrach for the purchase of crude oil for resale to others (Icsel Dep. at 371).

On May 14, 1971 Pan-Islamic executed a contract with Sonatrach that obligated it to purchase eighty million barrels of crude oil at $2.98 per barrel f.o.b. Algeria in 1972-73 and an option to purchase forty million barrels each year thereafter for the next four years. (Exhibit A to Plaintiff's Complaint).

Prior to entering into the contract with Sonatrach Pan-Islamic had a tentative understanding with Jeffrey Miller to sell forty million barrels of the oil to his client, but no written contract was ever executed by the client. (Clark Dep. at 129-30; Icsel Dep. Exh. 3, Document PI-00981). However, when he was in Algeria negotiating the contract with Sonatrach, Benton Musselwhite telephoned Miller's client, who advised Musselwhite that the contract price was too high. (Clark Dep. at 290-292, 312, Musselwhite Dep. at 85).

While Musselwhite was in Algeria, he also received a telex from Icsel informing him that Coastal States Gas Producing Company ("Coastal States") might be interested in purchasing forty million barrels of the oil. At that time, however, there was no firm agreement with Coastal States. (Icsel Dep. at 138, 204-25; Icsel Dep.

Exh. 12, Doc. PI-00150; Musselwhite Dep. at 83; Clark Dep. at 649).

Thus, prior to executing the contract with Sonatrach, Pan-Islamic had two potential purchasers with whom they had not agreed upon a price for the crude oil.

Prior to executing the contract with Sonatrach, Pan-Islamic made no computation of the cost to transport the oil from Algeria to the United States, nor did it calculate whether the delivered price would be competitive (Icsel Dep. at 132-134; Ragan Dep. at 62). In fact, Pan-Islamic had no idea what competitive crude oil prices were. (Clark Dep. at 197-198; Icsel Dep. at 133; Musselwhite Dep. at 266).

In subsequent negotiations between Coastal States and Pan-Islamic, Coastal States indicated that Pan-Islamic's price was too high. Coastal States offered to purchase 24,000,000 barrels at $2.55 per barrel (Doc. PI-00280) and later at $2.70 per barrel, but both offers were rejected by Pan-Islamic (Musselwhite Dep. Ex. 12, Doc. PI-01831-33A).

Similarly, the Miller agreement never resulted in the lifting of any of the Algerian crude due to the financial inabilities of Miller's client and the fact that the price was too high to be competitive. (Icsel Dep. at 187-190; Clark Dep. at 312; Beech Dep. at 65, 67, 73; Musselwhite Dep. at 85). Prior to entering the Sonatrach contract Pan-Islamic did not investigate Miller or make a credit check to determine if Miller or his principal had sufficient funds to purchase the oil. (Icsel Dep. at 134-135). Before Musselwhite went to Algeria, Sonatrach asked the Banque Romand in Geneva to confirm the availability of Miller's

client's funds and on May 10, four days prior to the execution of the Sonatrach contract, the bank telexed the Algerians that the funds had not been confirmed. (Clark Dep. at 290-293). Pan-Islamic's principals each testified that none of the Defendants interfered with the Miller contract. (*e.g.*, Beech Dep. at 36; Icsel Dep. at 107; Godwin Dep. at 169-170).

Pan-Islamic also alleges in its complaint that it entered into a contract with Petroco, a New York company, whereby Petroco agreed to purchase the Algerian crude. Icsel, the President of Pan-Islamic, testified however, that Pan-Islamic never consummated a contract with Petroco and that none of the Defendants did anything which caused or contributed to the failure of Pan-Islamic to enter into a firm contract with Petroco. (Icsel Dep. at 106, 221; Clark Dep. at 649-650; Godwin Dep. at 160).

On June 9, 1971, after Pan-Islamic had failed to remove any crude oil from Algeria as required by the contract, Sonatrach telegrammed Pan-Islamic that failure to remove the oil was a violation of its contract (Doc. PI-01188-89) and on June 17 Sonatrach further advised Pan-Islamic that as a result of the breach, Sonatrach considered itself released from the agreement. (Doc. PI-01189-90).

Mr. Musselwhite unsuccessfully sought to reduce the contract price of the oil from Sonatrach (Musselwhite Dep. Exh. 3, Doc. PI-00193-8). Mr. Charles Ragan, who had been employed by Pan-Islamic as a consultant and commission agent, testified that there were conversations among the Pan-Islamic people to the effect that the contract price with Sonatrach was too high. He stated that he knew of no other reason for Pan-Islamic's in-

ability to sell the crude other than the high price (Ragan Dep. at 61-62).

Similarly, the other principals in Pan-Islamic have testified that they knew of no facts that would support any charges in this litigation against any of the Defendants regarding an embargo. (e.g., Wantschek Dep. at 260-262). Both Mr. Icsel and Mr. Godwin testified that they knew of no actions by any employee or representative of any of the Defendants that in any way interfered with Pan-Islamic's attempts to resell the oil. (Icsel Dep. at 105-106; Godwin Dep. at 159).

The arbitration proceeding resulted in a finding that Pan-Islamic breached its contract with Sonatrach as of June 17, 1971. (Doc. PI-00681). The arbitrator held that Pan-Islamic's claim that it was prevented from carrying out the terms of the contract by any embargo or boycott of Algerian oil was not valid and noted that at least five other companies, including one in the United States, were taking deliveries of substantial quantities of Algerian crude oil throughout May and June of 1971. (Doc. PI-00673-74).

The testimony of Plaintiff's principals clearly reflects difficulties by Pan-Islamic *in* selling the crude oil because its price was too high. Potential customers were unwilling to buy at the price quoted. (Icsel Dep. at 142-145; 190, Icsel Dep. Exh. 4, Doc. PI-01866). Mr. Tom Beech, an attorney for Pan-Islamic, testified that he and certain principals of Pan-Islamic met with Sonatrach in Algiers in the summer of 1971 and sought a more competitive price for the oil (Beech Dep. at 19, 21-22) and that in the meeting Pan-Islamic urged that it was unable to sell the oil because the $2.98 price was too high and

unfair. (Beech Dep. at 65, 67, 72). Beech also testified that at no time during this meeting did Pan-Islamic claim that there was a world-wide boycott of Algerian oil. He further stated that Pan-Islamic tried to obtain a price of approximately $2.65 per barrel but Sonatrach was unwilling to reduce the contract price to that amount. (Beech Dep. at 21-22).

Almost three years after Sonatrach cancelled its contract, Plaintiff filed this lawsuit.

FACTS RELATING TO EACH DEFENDANT

The Defendants in this lawsuit generally fall into two categories: (1) those which the evidence demonstrates were not contacted by or on behalf of Pan-Islamic and therefore could not have "refused to deal" with Plaintiff; and (2) those that were contacted by or on behalf of Pan-Islamic but who declined to purchase the Algerian crude oil from Pan-Islamic.

1. *Defendants Not Contacted By Or On Behalf Of Pan-Islamic*

Contrary to Plaintiff's allegation that it "contacted representatives of all of the Defendants named herein," there is no evidence in this case that persons acting on behalf of Pan-Islamic ever contacted any responsible individual at Amerada Hess, Amoco, Atlantic Richfield, Continental, Getty, Gulf, Mobil, Occidental, Phillips, Standard (Indiana) or Tenneco concerning the possible sale of Algerian crude oil. (See Exhibit "A" attached hereto which lists the specific references in the depositions of various principals, agents and stockholders of Pan-

Islamic and affidavits of representatives of Defendants which evidence this lack of contact.)

To the contrary, representatives from each of these companies who were responsible for such crude oil purchases in 1971 and/or who now have custody of the documents which would substantiate any such contact by Pan-Islamic have submitted affidavits that the respective companies were never contacted by anyone on behalf of Pan-Islamic. (See Attachments 1 through 12 to Defendants' Consolidated Motion For Summary Judgment filed on January 19, 1977, and attachments to Motion Reurging Defendants' Consolidated Motion For Summary Judgment and Joinder of Additional Defendants in Such Motion filed on June 7, 1977).

The deposition testimony of Pan-Islamic's principals and representatives further indicates that no one knew who was contacting which company and that everyone thought the other one was making the contacts. For example, Eric Icsel, the President of Pan-Islamic, testified that "it seemed like no one knew what the other one was doing" and that he thought Musselwhite, Wantscheck, Clark and Godwin were contacting companies (Icsel Dep. at 97, 194). But the testimony of these individuals demonstrates that they made very few or no contacts. Icsel also testified that he thought Charles Ragan was the person who was contacting all the oil companies (Icsel Dep. at 84), but Ragan testified that the only Defendant he contacted was Exxon (Ragan Dep. at 21).

It is also clear that Pan-Islamic never contacted any of the Defendants in writing nor did it keep a formal list of which companies were contacted. (Icsel Dep. at

194; Musselwhite Dep. at 826). The only evidence Plaintiff has offered of the contacts it made with Defendants is an unsworn document entitled "Plaintiff's Compliance with Agreed Order of November 11, 1974, to Provide Information," ("Plaintiff's Compliance"), submitted in response to this Court's order to supply Defendants and the Court with a list of the specific representatives from Pan-Islamic who allegedly contacted each of the Defendants together with the names of the persons contacted at each company.

As to Defendants, Amerada Hess, Amoco, Atlantic Richfield, Continental, Getty, Gulf, Mobil, Phillips, Standard (Indiana) and Tenneco, Plaintiff's Compliance alleges that they were contacted by Cordell Moore, Charles Ragan and George Fowlkes (and in some instances others who will be discussed infra).

a. *Cordell Moore*

In his affidavit submitted in this litigation Mr. Moore states that

> . . . I have received no compensation whatsoever from Pan-Islamic nor have I attempted to negotiate the sale of any crude oil on their behalf.
>
> . . .
>
> I have examined various documents which Pan-Islamic has produced, . . . which mentioned my name. In particular, I state that there is no basis in fact for the statement in document PI-01561 which reads:
>
> > This is to kindly advise you that J. Cordell Moore, Former U.S.A. Assistant Secretary of Interior in charge of Oil and Gas has associated

> with Pan-Islamic Trade Corp. in the finalization of contracts for Algerian Crude with Donald Cox, Sr., Vice President of Standard of New Jersey (Esso International) and Robert Doyle in charge of Cargo Division. This above named person may contact you.

(Moore Affidavit, Muselwhite Ex. No. 43, Doc. PI-00496).

He stated further that Document PI-01561 was a complete fabrication since he never participated in the finalization or formation of any contracts on Pan-Islamic's behalf, and that any reference to his name which purports to indicate that he had a formal business association with Pan-Islamic was a fabrication.

b. *Charles Ragan*

Mr. Ragan testified in his deposition that he had no personal knowledge regarding contacts made by anyone on behalf of Pan-Islamic with any agent, employee or representative of Amoco, Atlantic Richfield, Getty, Mobil, Occidential or Tenneco (Ragan Dep. at 127, 151, 157-160). He also stated that he was not able to identify any person or company that he talked to about buying the Algerian crude other than Commonwealth and Exxon (Ragan Dep. at 65).

c. *George Fowlkes*

There is no documentary evidence in this case generated by Mr. Fowlkes, authenticated or otherwise, which would substantiate any of the alleged contacts. Mr. Fowlkes died on November 15, 1972 before this lawsuit was filed (Ragan Dep. at 51) and can provide no assistance for Plaintiff.

Subsequent to filing "Plaintiff's Compliance" and in response to motions to dismiss filed by Defendants, Pan-Islamic filed another instrument entitled "Plaintiff's First Amended Compliance" in which it states that "there have been no contacts with Defendants other than thise revealed in the depositions [of Ragan, Musselwhite, Godwin, Clark and Wantscheck], interrogatories and other discovery to date, except that Plaintiff wil attempt to offer proof that Charles Ragan, George Fowlkes, and/or Cordell Moore did make the contacts outlined in Ragan's Memorandum (Doc. PI-01465). Ragan, however, denied in his deposition having firsthand knowledge of any of the contacts listed in the document prepared by him and claimed that the information contained in the document was provided to him by others. (Ragan Dep. at 27).

In the Amended Compliance Pan-Islamic alleged, however, that even though Mr. Ragan testified in his deposition that he did not make all of the listed contacts, that Ragan is "hostile to Plaintiff's cause of action" and inferred that he lied in his deposition. This assertion, however, is meaningless in view of the fact that both Mr. Musselwhite and Arthur Gochman, counsel for Pan-Islamic, were present throughout the deposition of Mr. Ragan but never cross-examined him on this subject.

Pan-Islamic further stated in the Amended Compliance that although "it has no indiepended proof *at this time* that Ragan, Folkes [sic] and Moore actually made the contacts . . . Plaintiff will make every effort to develop evidence of those contacts pursuant to the Order of the Court dated August 5, 1976." Since that date Plaintiff has submitted no further evidence which would substantiate any contact made on behalf of Pan-Islamic to sell

the crude oil to any of the Defendants, nor any evidence which would contradict the sworn affidavit of Mr. Moore nor the deposition testimony of Ragan, Clark, Icsel or Wantschek.

Plaintiff's Compliance alleges that Occidental was contacted by Benton Musselwhite (the person who prepared and signed Plaintiff's Compliance). Yet in his deposition, Mr. Musselwhite stated that he did not personally talk to anyone at Occidental although he vaguely recalled that Cordell Moore was going to talk to Marvin Watson at Occidental (Musselwhite Dep. at 1069).

As to Defendant Getty, Plaintiff's Compliance states that in addition to Ragan, Moore and Fowlkes, Getty was also contacted by Terrence Clark and Gerald Godwin. Yet Clark specifically testified that he did not know who contacted Getty (Clark Dep. at 646) and Godwin testified that his only contacts with Defendants were with Shell and Amerada Hess (Godwin Dep. at 154).

Although both Clark and Godwin testified that they contacted someone at Amerada Hess at its Ship Channel facility, neither of them could state the name of the person they talked to or what the outcome of the contact was. Godwin pointed the finger at Clark who said that he thought Ragan called on someone there. (Godwin Dep. at 128-129; Clark Dep. at 423-424). Similarly, Musselwhite testified that he thought either Ragan or Fowlkes contacted Amerada Hess (Musselwhite Dep. at 860).

Accordingly, the facts are uncontroverted that Defendants Amerada Hess, Amoco, Atlantic Richfield, Continental, Getty, Gulf, Mobil, Occidental, Phillips, Standard (Indiana) and Tenneco were not contacted by or on

behalf of anyone from Pan-Islamic in an attempt to sell the Algerian crude.

2. *Defendants Who Were Contacted by Pan-Islamic*

The remaining Defendants, Texaco, Shell, Exxon and Sun, acknowledge that they were contacted on behalf of Pan-Islamic concerning the possible purchase of the Algerian crude oil. However, evidence as to each of these Defendants raises no inference of the existence of any conspiracy among them to refuse to deal with Pan-Islamic.

SUN

In his affidavit, (Attachment 10 to Defendants' Consolidated Motion for Summary Judgment), Mr. J. Van Dyck Fear stated that Sun's internal records indicate that there were two discussions in May, 1971 between Sun personnel and a representative of Pan-Islamic.[5] These records reflect that the lowest price acceptable to Pan-Islamic was $3.12 per barrel f.o.b. Algeria. Mr. Fear states that since no samples of the Algerian crude oil were available from Pan-Islamic the offer was summarily rejected because the price was substantially above the prevailing market price at the time. Plaintiff has offered no admissible evidence to controvert the fact that Sun made a unilateral decision to reject Pan-Islamic's offer because the price was too high.

EXXON

In Plaintiff's Compliance, Pan-Islamic alleged that Cordell Moore, Charles Ragan and George Fowlkes con-

5. See also Answers and Objections of Defendant Sun Oil Company (Delaware) to Plaintiff Pan-Islamic Trade Corporation's First set of Interrogatories, filed on September 12, 1975, Nos. 50, 52 and 75.

tacted Exxon on Pan-Islamic's behalf. As previously discussed Mr. Moore has categorically denied any business relationship with Pan-Islamic. He acknowledged that he made one phone call to an Exxon representative to inform him that Pan-Islamic had Algerian crude oil for sale. However, Moore described as "total fabrications" documents produced by Pan-Islamic which purport to indicate that he participated in the formation or finalization of any contracts on behalf of Pan-Islamic. He further specifically denied any assertion contained within Pan-Islamic documents that he represented Pan-Islamic in any attempt to sell Algerian crude oil to Exxon. (Doc. PI-00496)

Any role played by Mr. Fowlkes in any capacity with Pan-Islamic is now moot since he died before this lawsuit was filed (Ragan Dep. at 51).

Thus the only basis upon which Pan-Islamic could premise Exxon's participation in the alleged conspiracy is the testimony of Charles Ragan. By virtue of Ragan's deposition testimony, however, he has effectively destroyed any support for the allegations against Exxon.

Ragan had only one conversation with Exxon representatives during which the merits of the Pan-Islamic proposal were discussed. He testified that this was the only substantive conversation between Pan-Islamic and Exxon of which he had knowledge. (Ragan Dep. at 90). Ragan's recollection of this conversation is as follows:

> Netly, they said that they felt that while they appreciated my coming and acquainting them with this possibility, they had their own channels. A company as large as Exxon naturally would. They thought that they should try those.

(Ragan Dep. at 81).

This is consistent with the affidavit of the Exxon representative with whom Ragan met, Mr. Robert J. Doyle (Attachment 4 to Defendants' Consolidated Motion For Summary Judgment) that Exxon did have more direct alternative sources for Algerian crude oil. Mr. Doyle stated that at the time Pan-Islamic offered the Algerian crude oil to Exxon, Exxon had been engaged for over a month in direct negotiations with Sonatrach for the purchase of Algerian crude oil at $2.75 per barrel.

This price was forty cents per barrel cheaper than the price offered by Pan-Islamic (Ragan Dep. at 83). Manifestly, Exxon's contract with Sonatrach rebuts any allegation of Exxon's participation in an unlawful conspiracy to boycott Algerian oil. The sworn statement of Exxon's representative is rather that Exxon declined Pan-Islamic's offer for sound business reasons—the price was not competitive—and Pan-Islamic has offered no evidence to rebut this testimony.

Further, Ragan testified in his deposition that he has no reason to believe that Exxon's decision to decline Pan-Islamic's offer was based upon any consideration other than the price and that references in documents produced by Pan-Islamic to the effect that Exxon was seriously considering purchasing crude oil from Pan-Islamic were exaggerated by Pan-Islamic in an attempt to influence Sonatrach to give Pan-Islamic additional time to dispose of the crude oil (Ragan Dep. at 82-83).

Finally, Ragan denied having knowledge of any facts that would support or tend to support, the operative allegations of the complaint in this action (Ragan Dep. at 108-111), and denied stating that the difficulty Pan-

Islamic encountered in selling the Algerian crude oil was attributable to the boycott (Ragan Dep. at 110-111). On the contrary, he stated that he had no knowledge of, or reason to believe the existence of a boycott. (Ragan Dep. at 109-110).

TEXACO

The uncontroverted evidence in regard to Texaco is that it also refused to purchase the Algerian crude from Pan-Islamic because the price was too high.

In the late spring or early summer of 1971, Mr. Benton Musselwhite and another representative of Pan-Islamic visited Mr. Arthur S. Conner, Assistant Manager of Texaco's Crude Oil Purchase and Sales Division International, at his offices in New York, to discuss the sale of Algerian crude oil by Pan-Islamic to Texaco. The offer was to sell the crude at $3.05 per barrel f.o.b. Arzew, Algeria. This price was well in excess of what Texaco's subsidiaries were then paying for comparable grades of crude oil and to offers available to Texaco from others during that period. (Conner Affidavit, Attachment 12 to Defendants' Consolidated Motion For Summary Judgment).

Further, at the very time of the meetings between Texaco and representatives of Pan-Islamic, Texaco was purchasing products derived from the processing of Algerian crude oil from Societa Italiana Resine, which was then processing such crude for Texaco (Roland M. Routhier Affidavit, Attachment 12 to Defendants' Consolidated Motion for Summary Judgment). (See also Icsel Dep. at 328-340; Musslewhite Dep. at 321-328).

SHELL

There are no facts before the Court to support Plaintiff's allegation that Shell participated in a conspiracy to prevent the sale of Algerian crude oil by Pan-Islamic. Although Shell admits that it was contacted by representatives of Pan-Islamic, the sworn testimony of Pan-Islamic's principals and Pan-Islamic's internal documents establish that the reason Shell did not purchase the crude oil was that the price was too high.

Shell relies on the affidavit of J. K. Moore (Exhibit A to its Motion for Summary Judgment filed 1/24/77) in which Mr. Moore stated that on May 26, 1971 he was visited by Benton Musselwhite and Ed. L. Clark on behalf of Pan-Islamic to discuss the sale of the Algerian crude to Shell at a price of $3.15 per barrel, f.o.b. Arzew, Algeria, or as low as $3.05 per barrel.

Moore also stated that during the same period of time in 1971 Shell was able to purchase from domestic sources crude oil of such quality and volume to satisfy its refining and marketing requirements at $.30 per barrel less than Pan-Islamic's offer.

Shell determined that Pan Islamic's offer was not competitive in comparison to other available crude oil sources, both domestic and foreign, and therefore independently declined to purchase the crude oil from Pan-Islamic. (Moore Affidavit, ¶ 8).

Each of Pan-Islamic's principals who has been deposed has admitted that he has no facts to support any charge that Shell has engaged in conduct violative of the antitrust laws. While the complaint charges that Defendants, pursuant to a conspiracy, interfered with Pan-Islamic's efforts to sell crude oil and refused to deal with Pan-

Islamic, the testimony of Pan-Islamic principals not only establishes that the high purchase price was the cause of Pan-Islamic's failure to make any sales, but also conclusively demonstrates that the claim that Shell was responsible for such failure has no basis in fact. The principals of Pan-Islamic testified that no Defendant interfered in any way with Pan-Islamic's attempts to sell the Algerian crude oil. Erkan Icsel, President of Pan-Islamic, testified:

Q. One of the allegations in this complaint against these defendants is that the defendants interfered with Pan-Islamic's efforts to sell the oil, without specifying any actions of interference or without pointing to any particular companies. Do you know of any actions done by any employee or representative of Shell Oil Company that in any way interfered with Pan-Islamic's attempts to sell the oil?
A. No.
Q. Would your answer be the same for each of the other defendants listed?
A. That will be the same for all the defendants, yes, sir.
Q. And more specifically with respect to efforts to sell to Petroco, do you have any knowledge of any action by any of the defendants, Shell and anyone else in this lawsuit, that interfered with Pan-Islamic's efforts there?
A. No, sir.
Q. PanIslamic never sold, never was able to consummate a deal with Petroco that ended up in any lifting of crude from Algeria isn't that right?
A. Yes; to my knowledge it is correct.
Q. And to your knowledge the fact that there were no liftings was not in any way involved with the actions of these defendants.
A. That's right. (Icsel Dep. at 105-06).

Charles Ragan, who served as a consultant and commission agent for Pan-Islamic, testified:

> Q. Mr. Ragan, did you ever make a statement that the reason Pan-Islamic was not able to sell the crude which it had contracted to purchase from Algeria was because of a boycott instituted by mapor oil companies against Algerian crude?
> A. I don't see how I could have since I had no knowledge of such a thing as a boycott.
> Q. You have no knowledge that there ever was any boycott?
> A. That's correct.
> Q. You don't have any reason to believe that there was a boycott?
> A. No, sir. (Ragan Dep. at 109-10).

Thomis Beech, who served as Pan-Islamic's counsel from about the spring of 1971 to December, 1971, testified:

> Q. With respect to Paragraph 7 of Section III [of the complaint], do you have any knowledge of any facts which would support or tend to support the allegations of Paragraph 7?
> A. No, sir. (Beech Dep. at 169).

Paragraph 7 of the complaint claims that Defendants, pursuant to a conspiracy, interfered with Pan-Islamic's alleged contracts with Coastal States and Petroco, and, as a result, that Pan-Islamic lost its contract with Sonatrach and suffered monetary damages. Mr. Beech lacked knowledge of any facts to support that claim:

> Q. I take it, Mr. Beech, you have no knowledge of any action by any of the defendants in this lawsuit which would have injured Pan-Islamic or

its principals in any manner whatsoever; is that a fair statement?

A. Yes, sir, it is. (Beech Dep. at 169-70).

Terrence Clark, Vice-President of Pan-Islamic, testified:

Q. Now, I'm asking you, do you know of any fact that relates to any act of the Shell Oil Company that caused your company any damage?

A. I do not.

Q. Do you know of any act of the Shell Oil Company acting in concert or in agreement or in conspiracy with any other oil company that caused your company any damage?

A. No.

Q. Do you know of any act of Exxon Corporation that caused your company any damage?

A. I know of no specific acts, Mr. Simon.

* * * *

Q. If I go through the list—and I intend to do so—and I ask you as to each company if you can name any act that that company ever did that caused your company any damage, would your answer be in the negative?

A. It would have to be.

Q. And if I asked you as to each company that is a defendant here whether you know of any act that company ever did in unison with any other company that caused your company any damage, would your answer still have to be in the negative?

A. It would have to be, Mr. Simon.

Q. And if I asked you of any act that any defendant listed here did in combination or in agreement with any other company that caused your company any injury or damage, would your answer have to be in the negative?

A. To my knowledge, it would have to be in the negative.
Q. And, finally, if I were to ask you whether you know of any act of any oil company mentioned as a defendant in this complaint, any act in conspiracy with any other company which caused your company any damage, would your answer have to be in the negative?
A. In the same way I answered before, I don't know of any act. (Clark Dep. at 449-52).

See also Godwin Dep. at 185-61; Wantschek Dep. at 260-62; Serio Dep. at 65-66, 71; Romano Dep. at 45-46; McDowell Dep. at 63-64.

PLAINTIFF'S EVIDENCE

In opposition to Defendant's motions for summary judgment, Plaintiff has submitted the affidavits of Arnold I. Burns and Tyrus G. Fain (attachments to Plaintiff's Opposition to Motions For Summary Judgment) and the affidavit of Helmut J. Frank (Attachment to Additional Response of Plaintiffs to Defendants' Motions For Summary Judgment). The Court has considered these affidavits in a light most favorable to the Plaintiff and has determined that they fail to comport with the requirements of Rule 56(e)[6] and present no admissible evidence which would raise any fact issue in the case.

Affidavit of Arnold I. Burns

Mr. Burns stated in his affidavit that he was contacted by Mr. Musselwhite in May or early June, 1971, to

6. Rule 56(e) provides in part that "Supporting and opposing affidavits shall be made on personal knowldge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

determine whether he knew of any parties who might be interested in purchasing the Algerian crude oil from Pan-Islamic and that he subsequently helped to negotiate the contract between Pan-Islamic and Petroco.

Paragraphs 3, 6, 7, 8, 9 and 10 of Mr. Burns' affidavit consist entirely of statements allegedly made by Joseph Buchanan, the President of Petroco, to Mr. Burns, or statements allegedly made by either Mr. Buchanan or representatives of Sonatrach in Mr. Burns' presence. It is well established that Rule 56(e)'s requirement that affidavits submitted in support of or in opposition to a motion for summary judgment be admissible in evidence prohibits the reliance upon hearsay. 6 MOORE'S FEDERAL PRACTICE § 56.22[1] (2d ed. 1976); *Broadway v. City of Montgomery, Alabama*, 530 F.2d 657 (5th Cir. 1976). Mr. Burns' statements in Paragraphs 3, 6, 7, 8, 9 and 10 constitute hearsay under the application of Federal Rules of Evidence 801-804 and are inadmissible to prove the truth of the matters asserted.

Other portions of Burns' affidavit consist of his characterizations of the feelings of third parties. (See ¶ 3, ¶ 6). These statements are either matters of which Burns is legally incompetent to testify (Rule 602) or, if relayed to him and offered to prove the truth of their contents, constitute inadmissible hearsay.

Further, Mr. Burns failed to affirmatively state in his affidavit that he has personal knowledge of the matters contained in the affidavit, as required by Rule 56(e). *Antonio v. Barnes*, 464 F.2d 584 (4th Cir. 1972); 6 MOORE'S FEDERAL PRACTICE § 56.22[1] n.18 (2d ed. 1976).

Affidavit of Tyrus G. Fain

Mr. Fain stated in his affidavit that he is the President of Gerard Corporation, a consulting firm in Washington, D.C., and that he was employed by Pan-Islamic to search newspaper files and various hearing reports concerning possible antitrust activities of the major oil companies. Attached to his affidavit are newspaper articles (some in French) and other reference materials regarding the activities of the major oil companies including a lengthy excerpt from a book entitled, *The Control of Oil,* and a copy of the complaint filed in Hunt v. Mobil Oil Corp., Civil Action No. 234-74-A, in the United States District Court for the Eastern District of Virginia.[7] All of this material is hearsay, and inadmissible. Although Mr. Fain stated that the attachments are "true and accurate copies" there is no statement in the affidavit that he possesses personal knowledge of any of their contents.

Affidavit of Helmut J. Frank

Mr. Frank is a Professor of Economics at the University of Arizona who was requested by Mr. Benton Musselwhite to prepare the Economic Analysis of the Crude Oil Sales Agreement Between Sonatrach and Pan-Islamic which is attached to his affidavit.

Mr. Frank stated that in preparing this analysis he relied on:

> . . . material thus far developed in connection Pan-Islamic Trade Corporation vs. Exxon Corporation,

7. The Complaint in the *Hunt v. Mobil Oil Corp.* case is in no way relevant to the instant action since it concerns an alleged combination and conspiracy to boycott Libyan crude oil, and therefore this Court has not considered it in ruling on the Motions for Summary Judgment.

> et al; public information available from the oil trade press, general media, and professional journals; other information generally available to persons in the petroleum industry; and his personal background and knowledge of the operation of oil markets and energy markets and the factors influencing crude oil prices . . . data gathered by National Economic Research Associates, Inc. (NERA), Los Angeles, California and a graduate student at the University of Arizona, Tucson, Arizona.

In the economic analysis Mr. Frank asserts various prevailing prices of crude oil at various points in time but does not include sworn or certified copies of underlying material on which he relied in extracting this price information. The statements therefore constitute hearsay since they are based on various published reports.

The loose hearsay nature of the Frank affidavit is best demonstrated by scrutiny of its primary conclusions;

> 1. The terms on which Algerian crude oil was available to Pan-Islamic and was offered for resale were within the range at which comparable crudes were being traded in the spring and early summer of 1971.
>
> . . . . . .
>
> 4. It is my opinion that when account is taken of all existing relevant data, of indications of conditions that could have been anticipated as likely to occur over the five-year period of the contract and renewal option, and of the fact that such information was in May and June of 1971, the offer of Pan-Islamic to the major oil companies, based upon its contract and option with Sonatrach, was a desirable offer *from an economic point of view* (emphasis in original)

Frank Affidavit at 20-21.

Nowhere, however, does Mr. Frank aver or imply that he has personal or hearsay knowledge of any Defendant who was offered crude oil for sale by Pan-Islamic or the price or terms at which the offer was made. The affidavit does not affirmatively demonstrate that Mr. Frank had knowledge of facts sufficient to support his conclusions.

Even if his conclusions were valid they are insufficient to raise any implication of a contract, combination or conspiracy among the Defendants. It is uncontroverted that the majority of the Defendants were not contacted by Pan-Islamic concerning the prospective sale of Algerian crude oil and therefore could not have "refused to deal" with Pan-Islamic as alleged in its complaint; and that any refusal by any Defendant to purchase crude oil was based on a unilateral decision of the non-competitive price at which the crude oil was offered for sale. At most, the conclusion of Mr. Frank's economic analysis is that the price that Algerian crude oil was available to Pan-Islamic and was in turn offered for resale by Pan-Islamic was "in the range" of comparable transactions of crude oil during the spring and early summer of 1971. Mr. Frank did not purport to evaluate the alternative sources of oil available to the Defendants at the time any of them might have been contacted by Pan-Islamic concerning the prospective sale of Algerian crude oil.

Each Defendant contacted by Pan-Islamic had alternative sources of supply at lower prices, as stated in the respective affidavits of the applicable Defendants (Affidavit of Robert J. Doyle, Exxon Affidavit of J. Van Dyck Fear, Sun; Affidavits of Roland M. Routhier and Arthur S. Connor, Texaco; and Affidavit of J. K. Moore, Shell.) Each Defendant which was contacted further

asserts that the refusal to purchase crude oil was a unilateral business decision based on its own independent requirements and alternative sources, without communication with any of the other Defendants herein. Mr. Frank's "economic analysis" did not purport to deal with these subjects that are central to Defendants' motions for summary judgment. Accordingly, even if the conclusion that Pan-Islamic was offering crude oil to some of the Defendants "in the price range" of comparable alternative sources is assumed to be true, it is insufficient to raise a fact issue on the missing element of a combination or conspiracy among the Defendants.

THE APPLICABLE LAW

Rule 56(c) of the Federal Rules of Civil Procedure provides, in pertinent part:

> The [summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The Court concludes that in this case there is no genuine issue as to any material fact and that Defendants are entitled to a judgment as a matter of law.

It is well established that Rule 56 is applicable to cases in which antitrust issues are alleged in the complaint. *Scranton Constr. Co., Inc. v. Litton Industries Leasing Corp.*, 494 F.2d 778 (5th Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975); *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253 (1968).

It is also clear that a Plaintiff in an antitrust case must do more than allege antitrust violations. He has the burden "to produce significant probative evidence at least of the *existence* of the alleged agreement or conspiracy." *Soloman v. Houston Corrugated Box Co., Inc.*, 526 F.2d 389, 396 (5th Cir. 1976) (emphasis in original). *Accord, Scranton Construction Co. v. Litton Industries Leasing Corp.*, 494 F.2d 778, 782 (5th Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975). Plaintiff has failed to do so in this case. The totality of its case is that some of the Defendants refused to purchase crude oil which it sought to sell. Plaintiff's principals have admitted they know of no facts to support Pan-Islamic's claims. The few Defendants that were contacted have denied that any conspiracy existed and have affirmatively stated that they refused to purchase Pan-Islamic's crude oil because the price was too high in comparison with other available sources. From the facts before the Court no inference can be drawn other than that each such Defendant contacted acted unilaterally and in conformity with its own economic interests. Even if other Defendants similarly refused to purchase, such parallel conduct cannot "supply a sufficient basis for submitting the question of preconcert [Sherman Act conspiracy] to the jury, absent attendant circumstances *making it unlikely that these parallel courses of action had resulted from the exercise of independent judgment by each manufacturer.*" *Gold Fuel Service, Inc. v. Esso Standard Oil Co.*, 306 F.2d 61, 64 (3rd Cir. 1962), *cert. denied*, 371 U.S. 951 (1963) (emphasis added).

The uncontradicted evidence in the record of this case indicates that the majority of the Defendants were not contacted by anyone on behalf of Pan-Islamic with the offer of sale of Algerian crude oil. It is therefore funda-

mental that these Defendants could not have "refused to deal" with Pan-Islamic as alleged in its complaint.

The unilateral refusal by Defendants Shell, Exxon, Texaco and Sun, to purchase the oil from Pan-Islamic does not constitute a violation of the antitrust laws.

Section 1 of the Sherman Act, 15 U.S.C. § 1, proscribes "contracts, combinations or conspiracies" in restraint of trade. The statute is directed only at joint action. *Ford Motor Co. v. Webster's Auto Sales, Inc.*, 361 F.2d 874, 879 (1st Cir. 1966), and does not prohibit independent business actions and decisions. A company has an absolute right to refuse to do business with another provided it acts independently and not pursuant to an unlawful understanding, tacit or expressed. *Weather-Wise Co. v. Aeroquip Corp.*, 468 F.2d 716, 718 (5th Cir. 1972), *cert. denied*, 410 U.S. 990 (1973).

Pan-Islamic's conspiracy allegations in this action are conclusory. It states no facts which would constitute a conspiracy to restrain trade nor does it allege with specificity that any of the contacted Defendants' refusal to purchase the crude oil from Pan-Islamic was pursuant to a conspiracy. *See Nelson Radio & Supply Co. v. Motorola*, 200 F.2d 911, 913-14 (5th Cir. 1952), *cert. denied*, 345 U.S. 924 (1953). The Court cannot accept such conclusions as true without a showing of any facts tending to support such conclusions. *Crummer Co. v. DuPont*, 223 F.2d 238, 245 (5th Cir. 1955), *cert. denied*, 350 U.S. 848 (1955); *Heart Disease Research Foundation v. General Motors Corp.*, 463 F.2d 98 (2nd Cir. 1972).

In deposition testimony, Plaintiff has suggested no facts or circumstances to show that any of the contacted Defendants' refusal to purchase crude oil from Pan-Islamic

was other than unilateral. From the uncontradicted facts, no inference of a tacit agreement to boycott Pan-Islamic can be made. *See Independent Iron Works, Inc. v. United States Steel Corp.*, 177 F.Supp. 743 (N.D. Cal. 1959), *aff'd*, 322 F.2d 656 (9th Cir.), *cert. denied*, 375 U.S. 922 (1963); *Vermillion Foam Products Co. v. General Electric & Co.*, 386 F.Supp. 255 (E.D. Mich. 1974); *National Research Bureau, Inc. v. Bartholomew*, 331 F.Supp. 1003 (W.D. Pa. 1971), *aff'd in part and rev'd in part on other grounds*, 482 F.2d 386 (3d Cir. 1973).

The mere fact that other Defendants also rejected Pan-Islamic's offer to sell crude oil is not sufficient to defeat this motion for summary judgment. *E.g., Dahl, Inc. v. Roy Cooper Co.*, 448 F.2d 17 (9th Cir. 1971); *Modern Home Institute, Inc. v. Hartford Accident & Indemnity Co.*, 513 F.2d 102 (2nd Cir. 1975). Such parallel conduct would be consistent with independent competitive decisions since, as demonstrated by the uncontradicted facts, Pan-Islamic's price for crude oil was not competitive.

The case law supporting a seller's absolute right to select its customers, or conversely, as here, a buyer to refuse to purchase, is inexhautible and covers al circuits and the Supreme Court. *Ark Dental Supply Co. v. Civitron Corp.*, 461 F.2d 1093 (3rd Cir. 1972) (affirmance of summary judgment in favor of Defendant on a Sherman Act refusal to deal case); *Weather Wise Co. v. Aeroquip Corp.*, 468 F.2d 716 (5th Cir. 1972), *cert. denied*, 410 U.S. 990 (1973) (reversal of judgment for Plaintiff in a Sherman Act refusal to deal case with directions that judgment be entered for defendant); *Shawver & Son, Inc. v. Oklahoma Gas & Electric Co.*,

463 F.2d 204 (10th Cir. 1972) (affirmance of summary judgment for Defendant in Sherman Act refusal to deal case); *Scott Medical Supply Co. v. Bedsole Surgical Supplies, Inc.*, 488 F.2d 934 (5th Cir. 1974) (reversal of judgment for plaintiff in Sherman Act refusal to deal case with instructions that judgment be entered for defendant); *Elder-Beerman Stores Corp. v. Federated Department Stores, Inc.*, 459 F.2d 138 (6th Cir. 1972) (reversal of judgment for plaintiff in Sherman Act refusal to deal case); *Packard Motor Car Co. v. Webster Motor Car Co.*, 243 F.2d 418 (D.C. Cir.), *cert. denied*, 355 U.S. 822 (1957) (reversal of judgment for plaintiff in Sherman Act refusal to deal case); *Schwing Motor Co. v. Hudson Sales Corp.*, 138 F.Supp. 899 (D. Md.), *aff'd per curiam*, 239 F.2d 176 (4th Cir. 1956), *cert. denied*, 355 U.S. 823 (1957) (affirmance of grant of defendant's motion dismissing a Sherman Act refusal to deal case); *Beckman v. Walter Kidde & Co.*, 316 F.Supp. 1321 (E.D. N.Y. 1970) *aff'd per curiam*, 451 F.2d 593 (2nd Cir. 1971), *cert. denied*, 408 U.S. 922 (1972) (affirmance of summary judgment for defendants dismissing a Sherman Act refusal to deal case); and *Stokes Eqp. Co. v. Otis Elevator Co.*, 340 F.Supp. 937 (E.D. Pa. 1972) (dismissal of plaintiff's Sherman Act refusal to deal case).

As the case law makes clear, not only may Defendants lawfully refuse to deal with Plaintiff, but such refusal cannot support an inference of conspiracy.

Pan-Islamic's Section 2 Sherman Act, 15 U.S.C. § 2, claim is limited to the single sentence that Defendants were "acting in conspiracy to monopolize and to attempt to monopolize the importation and distribution of foreign

oil into the United States in violation of Sec. 2 of the Sherman Act." This claim is but a conclusory allegation and fails to state a cause of action. *See Hiland Dairy, Inc. v. Kroger Co.*, 402 F.2d 968 (8th Cir. 1968), *cert. denied*, 395 U.S. 961 (1969); *Scranton Constr. Co., Inc. v. Litton Industries Leasing Corp.*, 494 F.2d 778 (5th Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975); *Cliff Food Stores, Inc. v. Kroger, Inc.*, 417 F.2d 203, 207 n. 2 (5th Cir. 1969); *McElhenney Co. v. Western Auto Supply Co.*, 167 F.Supp. 949 (W.D. S.C. 1958), *Aff'd* 269 F.2d 332 (4th Cir. 1959); *Carbon Steel Products Corp. v. Allen Wood Steel Co.*, 289 F.Supp. 584 (S.D. N.Y. 1968).

This conspiracy allegation is defective and without basis for the same reasons as Plaintiff's Section 1 claim.

CONCLUSION

Plaintiff, Pan-Islamic, has failed to substantiate its conclusory allegations of violations of the antitrust laws and to raise a fact issue in this case, and accordingly, it is hereby ORDERED:

Defendants' motions for summary judgment are GRANTED and this case is hereby DISMISSED.

The Clerk will file this Memorandum and Order and provide counsel for all parties with a true copy.

Done at Houston, Texas this 31st day of January, 1978.

/s/ WOODROW SEALS
United States District Judge

EXHIBIT "A"

List of Specific References in Depositions of Various Principals, Agents and Stockholders of Pan-Islamic, and in the Affidavits of Representatives of Defendants to Support the Fact that these Respective Defendants were not Contacted by or on behalf of Pan-Islamic

AMERADA HESS

Affidavit of B. T. Deverin
(Attachment 1 to Defendants' Consolidated Motion for Summary Judgment

Benton Musselwhite Deposition at 860-862
Terrence Clark Deposition at 423-424
Gerald Godwin Deposition at 128-129

AMOCO

Affidavit of E. D. Ernst
(Attachment 2 to Defendants' Consolidated Motion for Summary Judgment)

Affidavit of Cordell Moore
(DOC. PI-00496)

Charles Ragan Deposition at 127
Terrence G. Clark Deposition at 631-635
Gerald Godwin Deposition at 154
Benton Musselwhite Deposition at 527-532
Louis Romano Deposition at 57
Frank Serio Deposition at 71-72
Walter Wantschek Deposition at 367-369
Eric Icsel Deposition at 90
Kirby Smith McDowell Deposition at 49

EXHIBIT "A"

ATLANTIC RICHFIELD

Affidavit of Herbert H. Zachow
(Attachment to Motion Re-urging Defendants' Consolidated Motion for Summary Judgment and Joinder of Additional Defendants to Such Motion)

Charles Ragan Deposition at 157-158
Eric Icsel Deposition at 376
Terrence Clark Deposition at 676
Gerald Godwin Deposition at 214
Walter Wantschek Deposition at 255-257
Kirby Smith-McDowell Deposition at 49-51
Louis Romano Deposition at 57

CONTINENTAL

Affidavit of Allan H. LaPlante
Affidavit of N. G. Payne
(Attachment 3 to Defendants' Consolidated Motion for Summary Judgment)

Affidavit of Cordell Moore
(Document PI-00496)

Charles Ragan Deposition at 65

GETTY

Affidavit of Bill E. Williams
(Attachment to Motion Re-urging Defendants' Consolidated Motion for Summary Judgment and Joinder of Additional Defendants to Such Motion)

EXHIBIT "A"

Affidavit of Cordell Moore
(Document PI-00496)

Terrence Clark Deposition at 646
Walter Wantschek Deposition at 256
Gerald Godwin Deposition at 214
Charles Ragan Deposition at 159
Eric Icsel Deposition at 476
Louis Romano Deposition at 56
Kirby Smith-McDowell Deposition at 49-51

GULF

Affidavit of Edward C. Bortmess
(Attachment 5 to Defendants' Consolidated Motion for Summary Judgment)

Affidavit of Cordell Moore
(Document PI-00496)

Charles Ragan Deposition at 65

MOBIL

Affidavit of Walter A. Bork
(Attachment 6 to Defendants' Consolidated Motion for Summary Judgment)

Transcript of Proceedings, June 10, 1976 at 60

Affidavit of Cordell Moore
(Document PI-11496)

Charles Ragan Deposition at 151
Thomas Beech Deposition at 153
Terrence Clark Deposition at 713

EXHIBIT "A"

Gerald Godwin Deposition at 157
Eric Icsel Deposition at 399
Kirby Smith-McDowell Deposition at 103-104
Benton Musselwhite Deposition at 1054-1056
Louis Romano Deposition at 57
Frank Serio Deposition at 71-72
Walter Wantschek Deposition at 345

OCCIDENTAL

Affidavit of Thomas B. Jenkins
(Attachment 7 to Defendants' Consolidated Motion for Summary Judgment)

Affidavit of Cordell Moore
(Document PI-00496)

Charles Ragan Deposition at 162
Benton Musselwhite Deposition at 1069
Eric Icsel Deposition at 285
Terrence Clark Deposition at 601-602
Gerald Godwin Deposition at 214
Walter Wantschek Deposition at 255-257
Kirby Smith-McDowell Deposition at 49-51
Louis Romano Deposition at 47

PHILLIPS

Affidavit of Howard L. Stone
(Attachment 8 to Defendants' Consolidated Motion for Summary Judgment)

Affidavit of Cordell Moore
(Document PI-00496)

Charles Ragan Deposition at 65

EXHIBIT "A"

STANDARD (INDIANA)

Affidavit of T. A. Andrews
(Attachment 9 to Defendants' Consolidated Motion for Summary Judgment

Affidavit of Cordell Moore
(Document PI-00496)

Charles Ragan Deposition at 127
Terrence G. Clark Deposition at 631-635
Gerald Godwin Deposition at 154
Benton Musselwhite Deposition at 527-532
Louis Romano Deposition at 57
Frank Serio Deposition at 71-72
Walter Wantschek Deposition at 367-369
Eric Icsel Deposition at 90
Kirby Smith-McDowell Deposition at 49

TENNECO

Affidavit of Jay Lammons
(Attachment 11 to Defendants' Consolidated Motion for Summary Judgment)

Affidavit of Cordell Moore
(Document PI-00496)

Charles Ragan Deposition at 157-158
Eric Icsel Deposition at 277
Terrence Clark Deposition at 594
Benton Musselwhite Deposition at 1068
Gerald Godwin Deposition at 214
Walter Wantschek Deposition at 255-257
Kirby Smith-McDowell Deposition at 49-51

APPENDIX 5

PAN-ISLAMIC TRADE CORPORATION,
Plaintiff-Appellant,

v.

EXXON CORPORATION et al.,
Defendants-Appellees.

No. 78-1518.

United States Court of Appeals,
Fifth Circuit.

Dec. 10, 1980.

Oil brokerage business sued 16 oil companies, claiming that the business was prevented from selling Algerian crude oil, which it had purchased from the national oil company of Algeria, as a result of an unlawful worldwide boycott and conspiracy against Algerian oil entered into by the oil companies. The United States District Court for the Southern District of Texas, Woodrow B. Seals, J., rendered summary judgment for the oil companies and brokerage business appealed. The Court of Appeals, R. Lanier Anderson, III, Circuit Judge, held that: (1) the business was not entitled to amend its complaint to assert a cause of action for treble damages under the Clayton Act; (2) the district court did not improperly limit discovery; and (3) since there was no admissible evidence of a conspiracy to boycott Algerian crude oil, or of conscious parallelism participated in by the oil companies, summary judgment was appropriate.

Affirmed.

Appeal from the United States District Court for the Southern District of Texas.

Before COLEMAN, Chief Judge, REAVLEY and ANDERSON, Circuit Judges.

R. LANIER ANDERSON, III, Circuit Judge:

Pan - Islamic Trade Corporation ("Pan - Islamic") brought suit against sixteen oil companies,[1] claiming that it was prevented from selling Algerian crude oil which it had purchased from Sonatrach, the national oil company of Algeria, as a result of an unlawful worldwide boycott and conspiracy against Algerian oil entered into by the defendant oil companies. Pan-Islamic alleged violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C.A. §§ 1 and 2, and tortious interference with contract rights. During the course of the litigation below, Pan-Islamic moved for, but was denied, leave to file an amended complaint. After discovery, the trial court, in a decision reported at 1976-2 Trade Cas. ¶ 61,024 (S.D. Tex. 1976), granted all the defendants' motions for summary judgment with respect to all claims. The issues we must decide on this appeal are (1) whether leave to amend should have been granted, (2) whether discovery

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1. Amerada Hess Corporation ("Amerada Hess"), Amoco Oil Company ("Amoco"), Atlantic Richfield Company ("Atlantic Richfield"), Commonwealth Oil Refining Company, Inc. ("Commonwealth"), Continental Oil Company ("Continental"), Exxon Corporation ("Exxon"), Getty Oil Company ("Getty"), Gulf Oil Corporation ("Gulf"), Mobil Oil Corporation ("Mobil"), Occidental Petroleum Corporation ("Occidental"), Phillips Petroleum Company ("Phillips"), Shell Oil Company ("Shell"), Standard Oil Company (Indiana) ("Standard"), Sun Oil Company (Delaware) ("Sun"), Tenneco, Inc. ("Tenneco"), and Texaco, Inc. ("Texaco").

Commonwealth was dismissed as a party to this suit for lack of jurisdiction of the person.

was improperly limited, and (3) whether summary judgment should have been granted the defendants with respect to the Section 1 Sherman Act claim.[2] We affirm the trial court's decision in all respects.

I. Preliminary Facts

Pan-Islamic's story is that of a small group of businessmen daring to obtain the immense fortune promised by world crude oil trade, only to be frustrated either by their own inexperience in failing to appreciate market prices, and thus contracting with Sonatrach at too high a price, as argued by the defendant oil companies, or by an illegal conspiracy to boycott Algerian crude oil, as alleged by Pan-Islamic.

Pan-Islamic was organized on April 29, 1971, by five individuals who had no experience whatsoever in buying or selling crude oil. Mr. Erkan Icsel, a steamship agent, became president of the corporation; Mr. Terrence Clark, a former salesman and employee of the National Maritime Union, and Mr. Walter Wantschek, a salesman for a company conducting job training programs, became vice-presidents; Mr. Gerald Goodwin, who had a business supplying unionized temporary labor to shippers, became secretary-treasurer; and Mr. Benton Musslewhite, a practicing attorney, became its attorney and a stockholder.

The impetus to form Pan-Islamic came in early 1971, when Mr. Jeffrey V. Miller, a Dallas crude oil broker,

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2. Because Pan-Islamic does not discuss either in its brief or in oral argument the trial court's holding on its claim of tortious interference and on the Section 2 Sherman Act claim, these claims are considered abandoned. Fed. R. App. P. 28(a)(4); *Harris v. Plastics Manufacturing Co.*, 617 F.2d 438 (5th Cir. 1980).

telephoned Icsel requesting his help in obtaining forty million barrels of Algerian crude oil for sale to Miller's unspecified European client at a price of approximately $3.12 per barrel.[3] On the basis of Miller's telephone call and information obtained from Sonatrach that crude oil might be available at $3.05 per barrel f.o.b. Algeria, the Pan-Islamic principals formed their business venture.

To aid it in negotiations, Pan-Islamic hired as a consultant Mr. Charles Ragan, an attorney with brief experience in structuring crude oil contracts but with no previous participation in the actual purchase or sale of crude oil. In early May, 1971, Musslewhite and Ragan traveled to Algeria to negotiate with Sonatrach. Pan-Islamic entered these negotiations ill-prepared. Its principals had determined neither the posted price,[4] the market price f.o.b. of Algerian crude, the market price of crude delivered to American harbors, nor the transportation costs of crude from Algeria to the United States. Instead, Musslewhite and Ragan were prepared to negotiate a contract on the basis of a tentative offer of $3.12 per barrel f.o.b. Algeria from Miller despite not having ascertained Miller's authority to speak for his principal, not having an absolutely firm commitment from Miller's

3. There is no clear indication in the record as to why Miller approached Icsel with this request. At that time, Icsel was active in promoting freight between the U.S. Gulf and African ports. In this capacity he had had several contacts with Sonatrach in soliciting freight other than oil.

4. As explained by Prof. Helmut Frank, affiant for Pan-Islamic, posted prices in 1971 were chiefly intended to serve as a tax reference price and should not be confused with market prices although the posted price would be one factor in setting a floor below which market price could not drop. The defendant oil companies in interrogatories state that there is no relationship between posted prices and the market price paid, an assertion Pan-Islamic does not dispute.

principal,[5] not knowing the identity of his principal, and not making a credit check to determine whether Miller or his principal had sufficient funds to purchase the oil.

While in Algeria, Musslewhite received a telex from Icsel informing him that a second party, Coastal States Gas Production Company ("Coastal States"), might be interested in purchasing forty million barrels of oil. There is nothing in the record to indicate the extent of Coastal States' interest and it is clear that when the contract with Sonatrach was consumated, there was no firm agreement with Coastal States.

Despite having no firm contract with Miller's principal and with Coastal States, and not having investigated current market prices, on May 14, 1971, Pan-Islamic executed a contract with Sonatrach that obligated it to purchase eighty million barrels of crude oil at $2.98 per barrel f.o.b. Algeria to be lifted over a twelve month period beginning with the contract date. Pan-Islamic also received an option to purchase forty million barrels each year thereafter for the next four years. Pan-Islamic had a guarantee of the price of $2.98 per barrel through June 30, 1972, for a maximum of forty million barrels. The option thereafter linked the contract price to the posted price at Bejaia,[6] with a limitation in the contract price to 60% of the variations in the posted price.

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5. Some of Pan-Islamic's principals thought they had a firm commitment while others did not think so. The only document in the record suggesting a firm commitment is a purported communication, undated, from Miller agreeing to purchase 40,000,000 barrels of Algerian crude subject to confirmation of availability.

6. The posted price at Bejaia is determined according to a formula agreed upon among the Libyan government and oil company representatives meeting at Tripoli.

Shortly after the contract with Sonatrach was consummated, Musslewhite learned the identity of Miller's principal, Mr. Kroening, and contacted him concerning a sale. Kroening indicated that the price Pan-Islamic was asking was too high. Because of the continuing inability of Pan-Islamic and Kroening to agree upon price, the transaction promised by Miller's contact never came to fruition.

Similarly, Pan-Islamic was unable to complete negotiations with Coastal States for a resale of its Algerian crude oil. Coastal States offered to purchase 24,000,000 barrels at $2.55 per barrel, and later made a second offer at $2.70 per barrel, but both offers were rejected by Pan-Islamic.

After the transactions with Coastal States and Miller's principal failed to materialize, Pan-Islamic entered negotiations in June with a company named Petroco for the for the lifting of 25,000 barrels of Algerian crude per day. The principals of Pan-Islamic disagree among themselves as to whether a contract with Petroco was ever consummated. It is undisputed that Petroco did not take delivery of any oil at the appointed time.

Also during June, Pan-Islamic began an effort to sell its crude oil to the defendant oil companies and others.[7] How many of the defendant oil companies were ever contacted by Pan-Islamic and what offers Pan Islamic made to those contacted are matters which we shall discuss in detail below. No one ever purchased Pan-Islamic's Algerian crude oil.

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7. There is no explanation as to why some companies allegedly contacted were not made parties to this suit.

The parties to this suit dispute when Pan-Islamic's contract with Sonatrach terminated. The defendant oil companies claim the contract was terminated by July 27, 1971. The record shows that on June 9, 1971, Sonatrach notified Pan-Islamic that Pan-Islamic's failure to withdraw the required quantity of oil was in violation of the contract. On June 17, 1971, Sonatrach informed Pan-islamic that as a result of the breach, Sonatrach considered itself released from the contract. A subsequent telex dated July 27, 1971, confirmed Sonatrach's position.

Pan-Islamic claims that the contract was not terminated on July 27 but that it was able in August to renegotiate the price from Sonatrach down to approximately $2.84 per barrel f.o.b. Algeria. It is clear that by September or October, 1971, Pan-Islamic's contract with Sonatrach was terminated.

In April 3, 1974, Pan-Islamic filed this suit against the defendant oil companies. The complaint is sparse, conclusory and inartfully drafted. The only claim which is relevant to this appeal concerns an alleged conspiracy to boycott the crude oil purchased by Pan-Islamic. The complaint alleges a French-sponsored boycott of Algerian crude oil in response to the Algerian government's partial nationalization of French oil interests in Algeria. It alleges that each of the defendant oil companies participated in this boycott both by express and implied agreement. Although the complaint did not so indicate, it was clear from the evidence submitted by Pan-Islamic that it was relying heavily on the theory of conscious parallelism to establish an inference of conspiracy.

The trial court granted summary judgment to all the defendants on all claims. It found that the evidence sub-

mitted to Pan-Islamic concerning the existence of a French-sponsored boycott to be inadmissible hearsay. With respect to eleven of the defendants,[8] the trial court granted summary judgment on the ground that there was no evidence that anyone representing Pan-Islamic had ever contacted any responsible official concerning the Algerian crude. Summary judgment was granted to the remaining four defendants, Texaco, Shell, Exxon and Sun, on grounds that each had acted unilaterally in refusing Pan Islamic's offer because the asking price for the Algerian crude was noncompetitive. We affirm.

II. Amended Complaint

Approximately nine months after its original complaint had been filed, Pan-Islamic filed a motion for leave to amend its complaint. Count I of the proposed amended complaint contained essentially the same allegations and causes of action as in the original complaint. Count II of the proposed amended complaint, though would have considerably broadened the suit.[9]

Count II, like the original complaint, is cursory. It alleges additional violations of the antitrust laws under § 4 and § 8 of the Clayton Act, 15 U.S.C.A. §§ 15 and 19, and under § 1 and §2 of the Sherman Act, 15 U.S.C.A. §§ 1 and 2. In Count II, Pan-Islamic claims that the defendant oil companies have contracted, combined and conspired in restraint of trade and have mon-

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8. Amerada Hess, Amoco, Atlantic Richfield, Continental, Getty, Gulf, Mobil, Occidental, Phillips, Standard (Indiana), and Tenneco.

9. Since the only new allegations within the amended complaint are in Count II, we focus our attention on this part of the amended complaint.

opolized and attempted to monopolize the following operational areas of the petroleum industry:

1. Exploration and production of crude oil;
2. Transportation of crude oil;
3. Refining crude oil;
4. Transportation of refined petroleum products; and
5. Marketing of refined petroleum products.

Pan-Islamic in a conclusory allegation asserts that as a result of the above alleged violations, it was not able to sell its crude oil to the defendant oil companies or to others. In a series of additional conclusory allegations, Pan-Islamic charges the oil companies with manipulation in the exploration, production, and refining of crude oil. There is no factual allegation as to how this manipulation was accomplished. There is no allegation as to the purpose, substance, or understanding of the alleged § 1 conspiracy to restrain trade. The only factual allegation in Count II is that the oil companies have employed an attorney and have met under the guise of two groups of oil companies, the New York Policy Group and the London Policy Group, for the purpose of establishing a unilateral policy on Middle Eastern, Algerian, and Libyan oil. Pan-Islamic nowhere alleges how its injury was proximately caused by these alleged activities.

The district court refused to grant leave to file the amended complaint on grounds that Pan-Islamic had no standing under the amended complaint. The trial court reasoned that Pan-Islamic had failed to allege facts sufficient to show the injury it suffered was by reason of the

defendant oil companies' conduct, as required under 15 U.S.C.A. § 15. It found that Pan-Islamic had failed to allege facts showing that the asserted conduct was the proximate cause of its asserted injury and that any damages are not merely incidental, consequential, or so removed from the injury as to be only remotely causative. The trial court also concluded that the defendants would be subjected to hardship and prejudice if the filing of the amended complaint were allowed and if Pan-Islamic were permitted to pursue massive discovery into every phase of the defendants' worldwide oil operations.

[1-3] Fed. R. Civ. P. 15(a)[10] provides that a trial court is to grant amendments "freely when justice so requires." Appellate review is restricted to determining whether the trial court abused its discretion in granting or denying leave to amend. *Zenith Radio Corp. v. Hazeltine Research*, 401 U.S. 321, 330, 91 S.Ct. 795, 802, 28 L.Ed. 2d 771 (1971); *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962); *Henderson v. United States Fidelity & Guaranty Co.*, 620 F.2d 530 (5th Cir. 1980). The trial court can consider many factors in exercising its discretion, "such as undue delay,

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10. Fed. R. Civ. P. 15(a) reads in full:
(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment. . . ." *Foman v. Davis*, 371 U.S. at 182, 83 S.Ct. at 230; *Henderson v. United States Fidelity & Guaranty Co.*, 620 F.2d at 534. The trial court can also examine whether undue prejudice to the movant will result from denying leave to amend. *Henderson v. United States Fidelity & Guaranty Co.*, 620 F.2d at 534. Clearly, if a complaint as amended is subject to dismissal, leave to amend need not be given. *DeLoach v. Woodley*, 405 F.2d 496 (5th Cir. 1969); *Byrne v. Kysar*, 347 F.2d 734 (7th Cir. 1965), *cert. denied*, 383 U.S. 913, 86 S.Ct. 902, 15 L.Ed.2d 668 (1966).

[4] We hold that the trial judge, in denying leave to amend, did not abuse his discretion for two reasons. The bulk of Count II was clearly subject to dismissal because Pan-Islamic failed to allege facts indicating standing to sue with respect to most, if not all, of the claims alleged in Count II. Those claims in Count II for which Pan-Islamic may have had standing to sue were adequately raised in its original complaint.

[5] Section 4 of the Clayton Act, 15 U.S.C.A. § 15 (West 1973), which reads,

> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and

> the cost of suit, including a reasonable attorney's fee.[11]

has been construed to impose a standing requirement on antitrust civil litigants. Not simply anyone arguably injured by an antitrust violation may bring suit. Even though an individual may suffer a pocketbook injury, he must be the "target" of the anti-competitive practice before he may sue. *Jeffrey v. Southwestern Bell*, 518 F.2d 1129, 1131 (5th Cir. 1975). The Supreme Court has noted with approval that "[t]he lower courts have been virtually unanimous in concluding that Congress did not intend the antitrust laws to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation." *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 262, n.14, 92 S.Ct. 885, 891, n.14, 31 L.Ed.2d 184 (1972).

Jeffrey explained the "target area" test of standing as follows:

> The 'target area' test arose as a means of limiting the class of potential treble-damage plaintiffs to those persons who could most adequately vindicate the purposes of the antitrust laws. To attain standing a person (whether corporation or individual) must be one against whom the conspiracy is aimed. Or, put in plutonomic terms, the complainant must show that he is within that sector of the economy which is en-

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11. This section of the Clayton Act is notably different from § 16, 15 U.S.C.A. § 26, which provides for injunctive relief. The Supreme Court, in *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 92 S.Ct. 885, 31 L.Ed.2d 184 (1972), discusses the different rules and policies behind these two standing provisions. Because Pan-Islamic does not request injunctive relief, we need not address the question of standing under § 16.

dangered by a breakdown of competitive conditions in a particular industry.

518 F.2d at 1131. An important rationale for this rule is to prevent an antitrust defendant from being subjected to a myriad of treble-damage suits by all those in any way affected by an antitrust violation. *Hawaii v. Standard Oil Co., supra.*[12]

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12. Cases in which standing has been found lacking are myriad and involve diverse types of plaintiffs:

Billy Baxter, Inc. v. Coca-Cola Co., 431 F.2d 183 (2d Cir. 1970), *cert. denied*, 401 U.S. 923, 91 S.Ct. 877, 27 L.Ed.2d 826 (1971) (franchisor has no standing to sue alleging antitrust violations reducing sales of franchisee and thereby reducing profits of franchisor); *Reibert v. Atlantic Richfield Co.*, 471 F.2d 727 (10th Cir.), *cert. denied*, 411 U.S. 938, 93 S.Ct. 1900, 36 L.Ed.2d 399 (1973) (employee has no standing to allege illegal merger resulting in loss of job); *Jeffrey v. Southwestern Bell, supra*, (telephone subscribers have no standing to complain of alleged attempt to monopolize telephone equipment market by phone company by below cost pricing, resulting in higher phone rates to subsidize loss); *Southern Concrete Co. v. United States Steel Corp.*, 535 F.2d 313 (5th Cir. 1976), *cert. denied*, 429 U.S. 1096, 97 S.Ct. 1112, 51 L.Ed.2d 543 (1977) (manufacturer of ready-mix concrete has no standing to complain of alleged tying arrangement between seller of cement and a competitor in ready-mix concrete); *Donovan Construction Co. of Minnesota v. Florida Telephone Corp.*, 564 F.2d 1191 (5th Cir. 1977), *cert. denied*, 435 U.S. 1007, 98 S.Ct. 1878, 56 L.Ed.2d 389 (1978) (electrical construction contractor has no standing to allege antitrust violation when defendant in phone interconnect business terminated contract when plaintiff entered interconnect business in another area); *In re Beef Industry Antitrust Litigation*, 600 F.2d 1148 (5th Cir. 1979), *other claims addressed*, 607 F.2d 167 (5th Cir. 1979), *cert. denied*, 49 U.S.L.W. 3264, ____U.S.____, 101 S.Ct.____, 65 L.Ed.2d____ (October 14, 1980) (cattle farmers and ranchers have no standing to allege retail price fixing by grocers, resulting in reduced consumer demand for beef).

Cases where standing has been expressly found include:

Dailey v. Quality School Plan, Inc., 380 F.2d 484 (5th Cir. 1967) (employee whose position was terminated has standing to allege termination due to illegal acquisition of employer by defendant), *cf. Reibert v. Atlantic Richfield Co., supra; Tugboat, Inc. v. Mobile Towing Co.*, 534 F.2d 1172 (5th Cir. 1976) (union and tugboat

[6] The determination of standing is a preliminary one, to be answered only from an examination of the allegations of the complaint. *In re Beef Industry Antitrust Litigation*, 600 F.2d 1148, 1168 (5th Cir. 1979), *other claims addressed*, 607 F.2d 167 (5th Cir. 1979), *cert. denied*, 49 U.S.L.W. 3264, ____U.S.____, 101 S.Ct. ____, 65 L.Ed.2d ____ (October 14, 1980); *Yoder Bros., Inc. v. California-Florida Plant Corp.*, 537 F.2d 1347, 1359 (5th Cir. 1976), *cert. denied*, 429 U.S. 1094, 97 S.Ct. 1108, 51 L.Ed.2d 540 (1977). Pan-Islamic, as indicated in both the original complaint and in the amended complaint, has no connection with the oil business other than its single contract with Sonatrach and its attempt to resell the Algerian crude. There is no allegation that Pan-Islamic intended to remain and establish itself in the oil brokerage business after completion of the Sonatrach contract. Pan-Islamic does not allege that it is a competitor in any of the five areas of the oil industry for which it alleges antitrust violations, or that it intends to enter these areas. The only injury claimed is its inability to sell the oil it purchased in the Sonatrach contract.

Pan-Islamic's allegations of antitrust violations in the area of exploration, production and transportation of crude oil fail to establish, because there is no allegation that Pan-Islamic has entered or has attempted to enter these phases of the oil business. Nor has Pan-Islamic alleged that it has had to pay monopolistic prices for crude

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employees have standing to allege that tugboat company and competitor union conspiring to provide cheaper labor); *Midland Telecasting Co. v. Midessa Television Co.*, 617 F.2d 1141 (5th Cir. 1980) (UHF station has standing to sue cable television and its co-owners alleging conspiracy to refuse to carry UHF's station's signal on cable).

oil or for transportation thereof, or that it was unable to purchase transportation for its crude oil.

[7] Pan-Islamic's allegation of antitrust violations in the phase of refining presents a closer question. Certainly monoply power or a conspiracy in restraint of trade at the refining level might give the defendant oil companies monopsony or oligopsony power[13] to dictate prices at which sellers of crude oil would be able to sell their product, or might facilitate an agreement not to purchase Pan-Islamic's oil. In both situations, Pan-Islamic would arguably be within the "target area." Nevertheless, even assuming *arguendo* Pan-Islamic's standing to sue with respect to these allegations, the trial court did not abuse its discretion in dismissing the amended complaint. These allegations of monopolization, attempts to monopolize, and conspiracy at the refining levels are repetitious of allegations made in the original complaint. As such, Pan-Islamic suffered no prejudice by the district court's refusal to grant leave to amend with respect to these claims.

[8] With respect to Pan-Islamic's allegations of antitrust violations in the transportation of refined products or in the marketing of refined products, Pan-Islamic has failed to establish that it is within the "target area" of these violations since it fails to allege it was a purchaser (or had any other nexus to) of transportation for refined products or was a purchaser of the refined products themselves. These are the same failures we found in *In re Beef Industry*, where we held that cattle farmers and

13. We use the term "monopsony" to refer to a monopoly of a single purchaser, and the term "oligopsony" to refer to an oligopoly resulting from a group of purchasers.

ranchers had no standing to sue on a theory of retail price fixing by grocers, since the farmers and ranchers failed to allege they had purchased any beef at retail. 600 F.2d at 1168. Indeed, Pan-Islamic's case is weaker than that in *In re Beef Industry* since Pan-Islamic does not make even rudimentary allegations, present in *In re Beef Industry*, that antitrust violations in the retail phase of the industry resulted in reduced demand for its product.[14]

Having found Pan-Islamic to have no standing with respect to four of the five antitrust violations it alleged in its amended complaint, and no prejudice resulting from the refusal to allow amendment of its complaint with respect to the fifth, we refuse to find the trial court abused its discretion in refusing Pan-Islamic leave to amend its complaint.

III. Extent of Discovery

Pan-Islamic complains that the trial court improperly limited discovery, wrongfully restricting discovery both in time and in scope. Clearly, if Pan-Islamic did not have an adequate opportunity to discover facts to oppose the motion for summary judgment, granting summary judgment

14. Pan-Islamic's complaint in no way suggests that it is relying on a passing-on theory with respect to the alleged antitrust violations in the marketing of refined petroleum products. A passing-on theory in this context would be that the depressed prices dictated by the distributors of refined products and imposed upon refiners are in turn passed on by refiners to sellers of crude. *See In re Beef Industry*, 600 F.2d at 1153, n.2. Pan-Islamic makes no allegation that its inability to sell its crude oil in any way resulted from depressed prices which purchasers of refined oil products conspired to exact from the refiners. Nor does Pan-Islamic make any factual allegation supporting such a theory. Accordingly, this theory is unavailable to preserve the amended complaint.

would be improper. *First-National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968); *George C. Frey Ready-Mixed Concrete, Inc. v. Pine Hill Concrete Mix, Corp.*, 554 F.2d 551 (2nd Cir. 1977); *Parrish v. Board of Commissioners of Alabama State Bar*, 533 F.2d 942 (5th Cir. 1976); *see also Hospital Building Co. v. Rex Hospital Trustees*, 425 U.S. 738, 96 S.Ct. 1848, 48 L.Ed.2d 338 (1976) (dismissals in antitrust cases prior to giving plaintiff ample opportunity for discovery to be used sparingly). After a careful review of the record, we are convinced that Pan-Islamic had ample opportunity to engage in discovery on all issues encompassed by its original complaint and to bring appropriate motions to compel answers and the production of documents.

Pan-Islamic filed its original complaint on April 3, 1974. After the defendants filed their answers to the original complaint, several of the defendants immediately began their discovery process. Pan-Islamic, though, did not begin its discovery at this time. Instead, it informed the trial court and defendants at a pre-trial conference held on October 31, 1974, of its intention to file the amended complaint, broadening the grounds for its requested relief. Pan-Islamic also made known its intention to request that discovery be handled pursuant to procedures established by the Manual for Complex Litigation. The trial court indicated that it would defer ruling on Pan-Islamic's motion concerning discovery under the Manual for Complex Litigation until it had ruled on Pan-Islamic's Motion to Amend.

On January 6, 1975, Pan-Islamic filed its Motion for Leave to Amend its Complaint and a motion that the

case be handled pursuant to the Manual for Complex Litigation. Thereafter, Pan-Islamic did not initiate any discovery until it filed its First Set of Interrogatories to the defendants on June 11, 1975, fourteen months after the complaint was filed. At this time the trial court had not ruled on Pan-Islamic's motion to amend its complaint. These interrogatories consisted largely of very general broad questions designed to ascertain what records were available and the identities of responsible officials. They were extensive, consisting of 120 questions, and were wide ranging, encompassing issues within both the original and amended complaint. All the defendants filed answers and objections to Pan-Islamic's interrogatories by October 8, 1975. The responses to these interrogatories among the defendants, not surprisingly, varies extensively. Many of the defendants identified relevant records and documents and indicated a willingness for Pan-Islamic to inspect and copy these documents. Some of the defendants objected on various grounds to questions arguably relevant to the issues of the original complaint. All of the defendants objected to the bulk of the questions on the grounds that such questions were relevant only with respect to the proposed amended complaint, on which the trial court had not yet ruled. Despite the paucity of answers to its interrogatories, Pan-Islamic did not move for a motion to compel answers to interrogatories pursuant to Fed.R. Civ.P. 37(a). Nor did it attempt any further discovery in the form of depositions, additional interrogatories, requests for production of documents, or follow-ups on those offers permitting Pan-Islamic to inspect and copy records.

Matters on both sides thereafter lay dormant until March 26, 1976, when the trial court scheduled a pre-trial conference for June 10, 1976, in order to determine whether to grant leave to amend, whether to handle the cases under the provisions of the Manual for Complex Litigation, and to establish a schedule for orderly and efficient discovery. At this pre-trial conference, the trial court denied Pan-Islamic's Motion for Leave to Amend Complaint, but agreed to give the necessary representations under 28 U.S.C.A. § 1292(b) for Pan-Islamic to bring an interlocutory appeal. The trial court asked Pan-Islamic how much additional time it would need for discovery with respect to the original complaint. Pan-Islamic informed the court that six months would suffice. Relying upon this representation, the trial court ordered Pan-Islamic to complete its discovery by December 10, 1976.

Pan-Islamic did not immediately resume its discovery after the June 10 pretrial conference. Instead, it devoted itself primarily to pursuing the interlocutory appeal of the trial court's refusal to grant leave to amend, which appeal this court refused to hear. Pan-Islamic also addressed several motions by various defendants for dismissal by reason of Pan-Islamic's failure to comply with court orders. It was not until October 13, 1976, four months into the six-month period the trial court gave Pan-Islamic for discovery, that Pan-Islamic wrote the defendants, requesting depositions of specific officials. The record indicates that the defendants were cooperative and expressed a willingness to arrange the depositions. Yet, on December 10, 1976, the end of the six-month period specified for discovery, Pan-Islamic had taken depositions of officials of only Exxon, Tenneco and Shell. Pan-

Islamic had submitted no additional interrogatories during this six-month discovery period. Nor had Pan-Islamic indicated it wished to inspect or copy records of those defendants expressing a willingness in the original interrogatories for such inspection.

Toward the expiration of the six-month period, on November 29, 1976, Pan-Islamic filed a Motion for Extension of Time to Complete Discovery. It grounded this request on the time necessary to bring the interlocutory appeal and to address the various motions of the defendants. Pan-Islamic did not make any motion to compel any discovery at that time or at any time before the December 10 deadline. The trial court denied Pan-Islamic's request in an order filed December 17, 1976.

On January 3, 1977, Pan-Islamic then filed a motion for the trial court to reconsider its denial of an extension of time in which to complete discovery. This motion essentially repeated the story told above and raised the same grounds for an extension as in the prior motion. Among other things, the motion made references to several motions mistakenly believed to have been filed by Pan-Islamic to compel answers to its interrogatories.[15]

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15. The request for the court to reconsider the denial of an extension of time clearly does not make any actual motion to compel answers, but merely indicates that Pan-Islamic thought motions to compel answers to interrogatories had already been filed and had been left unresolved by the court. A thorough review of the record shows that at no stage of the proceedings had Pan-Islamic filed motions to compel answers to its interrogatories. There is nothing in the record to indicate which interrogatories Pan-Islamic desired to be answered or why it believed itself entitled to such answers.

In a post-hearing letter-brief to this panel, Pan-Islamic concedes that no formal motion to compel answers was ever filed, and explains the mistaken reference to such motions to compel as resulting from a change of attorneys.

The trial court, noting that it was exercising an abundance of caution, granted Pan-Islamic three additional months from the date of the court's order, February 14, 1977, to continue discovery, but expressly limited the discovery to the depositions noticed by Pan-Islamic in its letter of October 13, 1976. The trial court, noting that Pan-Islamic had mistakenly assumed that motions to compel answers had been filed, nevertheless ruled that those interrogatories objected to by the defendants pertained to the amended complaint and were beyond the scope of Pan-Islamic's original complaint.

Despite the limitation placed upon this extended discovery, on March 2, 1977, Pan-Islamic filed a motion for inspection and production and copying of special documents in the possession of Exxon, the existence of which Pan-Islamic learned during its depositions of Exxon officials in the earlier six-month discovery period. This motion was denied by the trial court on grounds that its order of February 14, 1977, had expressly limited discovery to the depositions for which notice had been given on October 13, 1976.

Pan-Islamic thereupon completed its depositions of officials of the defendants, and in addition submitted affidavits in opposition to the defendants' motion for summary judgment.

[9] We test Pan-Islamic's contention of improperly curtailed discovery against the familiar standard that the trial court has wide discretion in determining the scope and effect of discovery. *Blum v. Gulf Oil Corp.*, 597 F.2d 936 (5th Cir. 1979); *Washington v. Norton Manufacturing, Inc.*, 588 F.2d 441 (5th Cir.), *cert. denied*, 442 U.S. 942, 99 S.Ct. 2886, 61 L.Ed.2d 313 (1979);

Aviation Specialities, Inc. v. United Technologies Corp., 568 F.2d 1186 (5th Cir. 1978).

[10] Pan-Islamic first complains that the trial court's dilatoriness in ruling on its motion to amend the complaint, despite alleged repeated requests for such a ruling,[16] precluded it from initiating meaningful discovery. Pan-Islamic maintains that until it knew whether the complaint could be amended, it could not properly pursue discovery.[17] This argument is without merit for two reasons. First, Pan-Islamic does not explain why it could not have pursued discovery with respect to the matters raised in its original complaint until the trial court had granted or denied leave to amend. Second, and more importantly, this argument fails because at the conference on June 10, 1976, when the court denied leave to amend the complaint, Pan-Islamic was asked how much time it would need to complete discovery on its original complaint. It was on the basis of Pan-Islamic's own representation that the trial court at that time allowed six additional months discovery. Pan-Islamic cannot now be heard to complain of any alleged dilatoriness by the trial court when the court later gave it the time it requested to complete discovery.

Although Pan-Islamic acknowledges, as it must, that it represented to the court that six additional months of discovery would suffice, it argues now that it should not

16. We find in the record only one such request, contained in Pan-Islamic's June 11, 1975, Motion to Reset the Pre-Trial Conference, asking the court to make a ruling on the amended complaint.

17. Pan-Islamic's argument appears premised on its belief that it could not meaningfully pursue discovery until the trial court had ruled on its motion to conduct discovery under the procedure for complex litigation, for which ruling on the motion to amend the complaint was crucial.

be held to its representation at the June 10 conference. It argues that when it requested six months, it assumed the trial court would defer ruling on the amended complaint. Since the trial court denied leave to file the amended complaint, but granted an interlocutory appeal, much of the six months, Pan-Islamic states, was consumed with pursuing the interlocutory appeal—a task it had not included in the estimate of six months for discovery. A reading of the transcript of the June 10 conference indicates, however, that after the court made clear that it was denying Pan-Islamic's motion to amend the complaint and would make the necessary representations to bring an interlocutory appeal, Pan-Islamic had ample opportunity to revise its estimate of time needed to complete discovery in light of its prosecution of an interlocutory appeal. However, it made no such revision.

Pan-Islamic maintains that the trial court abused its discretion in refusing to grant unlimited discovery in its order of February 14, 1977, extending discovery three months. We fail to perceive any abuse when Pan-Islamic had failed to efficiently utilize the two and one-half year period from its complaint to the June 10, 1976, conference or the interrogatories it filed during this period, and when Pan-Islamic failed to utilize the first four months of the six months it had requested for discovery. *Cf. Aviation Specialties, Inc. v. United Technologies Corp., supra* (where this court found adequate discovery in antitrust litigation when the trial court unilaterally imposed time limits on discovery and the appellant failed to act promptly to initiate discovery).

More specifically, Pan-Islamic argues that the trial court abused its discretion in interpreting its February 14 order

to preclude Pan-Islamic's March 2 motion to produce certain Exxon documents, documents which Pan-Islamic had discovered during deposition of Exxon officials. A fair reading of the order indicates that the trial court did limit the three-month extension only to the completion of depositions and not to the filing of motions to compel production of documents or answers to interrogatories.[18] The language indicates that the three-month extension was limited to depositions noticed and discovery initiated before December 10. Pan-Islamic did not formally file its motion to compel production until well after the December 10 cutoff. When it requested the three-month extension in its January 3, 1977, motion to reconsider the denial to extend discovery, Pan Islamic had attached as an exhibit a motion to produce the Exxon documents, which it indicated it would file if discovery were extended. Pan-Islamic clearly indicated it was not filing the motion with its request for an extension of discovery, and made no argument to the trial court that it had a right to compel production of the documents. The fact that the trial court expressly limited the three-month extension to depositions noticed, read against the context of the motion attached as an exhibit, indicates that the court was limiting discovery to completion of depositions already noticed and would allow nothing else. Nor can Pan-Islamic argue that the trial court's February 14 order was an abuse of discretion for refusing Pan-Islamic the right to file its motion

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18. The relevant language of the order reads:
> Plaintiff may continue discovery for three (3) months from the date of this Memorandum and Order *but this discovery is limited to* these depositions which Plaintiff noticed by letter of October 13, 1976, to Defendants, *i.e.*, only discovery which Plaintiff had initiated prior to the December, 1976, cut-off date originally established by the Court.

(emphasis in original).

to produce. When Pan-Islamic made its request on January 3 for reconsideration of denial of extension of discovery, it merely attached the proposed motion as an exhibit and clearly stated it was not filing or pursuing the motion at that time. Pan-Islamic did not argue, either then or when it subsequently filed the motion on March 2, 1977, that it had a right to produce these Exxon documents under the rules of discovery or pursuant to the trial court's June 10 order. Accordingly, we find no reversible error with respect to the trial court's denial of Pan-Islamic's motion to produce the Exxon documents.[19]

[11] Finally, Pan-Islamic argues that the trial court erred in failing to compel any answers to Pan-Islamic's interrogatories. The defendant oil companies counter by arguing that Pan-Islamic made no motions to compel and is raising this issue for the first time on appeal. Pan-Islamic maintains that although it may have failed to file any formal motions to compel answers, its motion to reconsider the trial court's initial refusal to extend discovery made it clear that it believed such motions had been filed and was tantamount to actually filing such a motion. The resolution of this issue is muddied somewhat by the trial court's ruling, despite its belief that no motions had been filed, that those interrogatories not answered pertained only to the amended complaint and could not be compelled. We begin our resolution of this issue by noting that the Federal Rules of Civil Procedure provide that if a party objects to or fails to answer interrogatories, the party submitting the interrogatories may

19. We note also that Pan-Islamic has made no demonstration of harm resulting from this denial. *See United States v. Garrett*, 571 F.2d 1323, 1326 (5th Cir. 1976); *Bell v. Swift & Co.*, 283 F.2d 407 (5th Cir. 1960).

move the court for an order under Fed. R. Civ. P. 37(a) compelling an answer. Fed. R. Civ. P. 33(a). An objection to an interrogatory is not passed on by a court unless a motion to compel under Rule 37(a) is made. Fed. R. Civ. P. 33(a); 8 Wright and Miller, *Federal Practice & Procedure, Civil,* § 2173 (1970). We refuse to hold in the circumstances of this case that Pan-Islamic's statement to the trial court indicating a belief that a motion had been made was the same thing as making such a motion.[20] Its statement did not alert its opponents to the need to oppose a pending motion. The statement made by Pan-Islamic was unaccompanied by a supporting brief or any specification of precisely what was sought to be compelled and why such compulsion was justified. Neither the defendants nor the trial court knew why Pan-Islamic believed itself entitled to certain answers. Neither had an opportunity to make a fully informed and rational decision, respectively, of whether or not to answer or to compel answers to the interrogatories Pan-Islamic wanted. Accordingly, we conclude that Pan-Islamic made no proper motion to compel below and thus did not properly present the issue before the trial court and, accordingly, its contention must fail.

[12] The fact that the trial court ruled that it would not compel answers despite its belief that no motion to compel had been filed does not change our reasoning. This ruling does not effectively preserve the matter on appeal. There is a familiar rule that an appellate court will ordinarily not consider a legal issue or theory that was not presented to the trial court. "[J]udicial economy

20. We do not imply a return to the technicalities of making motions found in common law and do not require adherence to a strict procedure as a prerequisite to an effective motion.

is served and prejudice is avoided by binding the parties to the facts presented and the theories argued below." *Bliss v. Equitable Life Assurance Society of U.S.*, 620 F.2d 65, 70 (5th Cir. 1980), *quoting Higginbotham v. Ford Motor Co.*, 540 F.2d 762, 768, n.10 (5th Cir. 1976). This rule does not apply if a manifest injustice would result from ignoring the new legal theory. *Higginbotham v. Ford Motor Co., supra.* Because Pan-Islamic's failure to obtain the requested answers does not result in a manifest injustice, the rule precludes it from raising these issues for the first time on appeal.

In summary, we conclude that the trial court did not abuse its discretion in limiting discovery. Pan-Islamic filed its first and only interrogatories on June 11, 1975, fourteen months after the complaint was filed. It never made a motion to compel with respect to the questions objected to by defendants. It never pursued the offers of several defendants to permit inspection and copying of records. At the pretrial conference on June 10, 1976, two years and two months after suit was filed, Pan-Islamic was granted six additional months for discovery, which was the length of time Pan-Islamic requested. Pan-Islamic pursued no further discovery until October 13, 1976, four months into the allotted six months. Although at first refusing another extension, the trial court did reconsider and permit three additional months of discovery, limited however to those depositions which had already been noticed. In light of Pan-Islamic's own lack of diligence in pursuing discovery, in light of Pan-Islamic's representation that the additional six month period would suffice, in light of the fact that the total time allowed for discovery was three years and one month, and under all the other circumstances here, we find no abuse of discretion.

IV. Appropriateness of Summary Judgment

Pan-Islamic relies heavily on *Poller v. CBS*, 368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962), to argue that summary judgment may not be granted in a complicated antitrust case. The Supreme Court held in *Poller* that where there is substantial factual evidence tending to show the existence of a conspiracy to eliminate a competitor and where the crucial question is motive, summary judgment should be used sparingly.[21] *Poller*, though, has not eliminated summary judgment from antitrust litigation. Many cases in this and other circuits have upheld summary judgment for defendants in antitrust suits.[22]

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21. In *Poller*, the Supreme Court stated,

> We believe that summary procedure should be used sparingly in complex anti-trust litigation where motive and intent play leading roles. The proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of even handed justice.

368 U.S. at 473, 82 S.Ct. at 491.

22. Such cases from the Fifth Circuit include: *Aladdin Oil Co. v. Texaco, Inc.*, 603 F.2d 1107 (5th Cir. 1979); *Daniels v. All Steel Equipment, Inc.*, 590 F.2d 111 (5th Cir. 1979); *American Telephone & Telegraph Co. v. Delta Communications Corp.*, 408 F.Supp. 1075 (S.D. Miss. 1976), *aff'd* 579 F.2d 972, *modified in part*, 590 F.2d 100 (5th Cir. 1978); *Aviation Specialities, Inc. v. United Technologies Corp.*, 568 F.2d 1186 (5th Cir. 1978); *Solomon v. Houston Corrugated Box Co.*, 526 F.2d 389 (5th Cir. 1976); *Scranton Construction Co. v. Litton Industries Leasing Corp.*, 494 F.2d 778 (5th Cir. 1974), *cert. denied*, 419 U.S. 1105, 95 S.Ct. 774, 42 L.Ed.2d 800 (1975).

Cases from other circuits include: *Natrona Service, Inc. v. Continental Oil Co.*, 598 F.2d 1294 (10th Cir. 1979); *Harvey v. Fearless Farris Wholesale, Inc.*, 589 F.2d 451 (9th Cir. 1979); *Lamb's Patio Theatre v. Universal Film Exchanges, Inc.*, 582 F.2d 1068 (7th Cir. 1978).

See also Rogers, *Summary Judgment in Anti-trust Conspiracy Litigation*, 10 Loyola U. of Chicago L.J. 667 (1979).

The holding in *First National Bank v. Cities Service Co.*, 391 U.S. 253, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968), has a significance equal to the cautionary language of *Poller*. *Cities Service* is very similar to the instant case. There the plaintiff unsuccessfully attempted to sell Iranian oil to several major oil companies. He alleged that his attempts were frustrated by a worldwide conspiracy to boycott Iranian oil in response to Iran's nationalization of certain assets. The question before the Supreme Court was whether summary judgment had been properly granted with respect to one defendant, Cities Service Company. In answering this question, the Supreme Court took the allegation of conspiracy among the other defendants to boycott Iranian oil to be both true and legally sufficient. 391 U.S. at 274, n.13, 88 S.Ct. at 1585, n.13. The facts the plaintiff produced to demonstrate participation by Cities Service in the conspiracy were the abrupt decision by Cities Service not to purchase the Iranian oil despite extensive negotiations with the plaintiff and the attractiveness of the plaintiff's offer. The Court noted that these facts standing alone might well be sufficient to require the case to be presented to a jury to determine the motives of Cities Service for not dealing with the plaintiff. But, significantly, the Court upheld summary judgment, noting that there was such an overwhelming amount of contrary evidence as to Cities Service's motives that summary judgment was proper. Among the factors supporting summary judgment were (1) that Cities Service had been engaged in negotiations to purchase Kuwait oil which it bought instead of the Iranian oil long before the offer by the plaintiff of Iranian oil was made, and (2) the obvious lack of common interests of Cities Service with the other alleged conspirators.

In upholding summary judgment for Cities Service, the Court made two noteworthy statements concerning summary judgment in antitrust suits. The Court stated:

> [N]ot only is the inference that Cities' failure to deal was the product of factors other than conspiracy at least equal to the inference that it was due to conspiracy, thus negating the probative force of the evidence showing such a failure, but the former inference is more probable.

391 U.S. at 280, 88 S.Ct. at 1588. In significant language qualifying the *Poller* caution against use of summary judgment in antitrust litigation, the Court stated:

> Essentially all that the lower courts held in this case was that Rule 56(e) placed upon Waldron [the plaintiff] the burden of producing evidence of the conspiracy he alleged only after respondent Cities Service conclusively showed that the facts upon which he relied to support his allegation were not susceptible of the interpretation which he sought to give them. That holding was correct. To the extent that petitioner's burden-of-proof argument can be interpreted to suggest that Rule 56(e) should, in effect, be read out of antitrust cases and permit plaintiffs to get to a jury on the basis of the allegations in their complaints, coupled with the hope that something can be developed at trial in the way of evidence to support those allegations, we decline to accept it. While we recognize the importance of preserving litigant's rights to a trial on their claims, we are not prepared to extend those rights to the point of requiring that anyone who files an antitrust complaint setting forth a valid cause of action be entitled to a full dress trial not withstanding the absence of any significant probative evidence tending to support the complaint.

Ibid. at 291, 88 S.Ct. at 1593.

[13] It is clear that this circuit has heeded the language in *Cities Service*. When faced with defendants' sworn denial of the existence of a conspiracy, it is incumbent upon the plaintiff to produce significant probative evidence demonstrating that a genuine issue of fact exists as to this element of the complaint. *Aviation Specialities, Inc. v. United Technologies Corp.* 568 F.2d 1186 (5th Cir. 1978); *Solomon v. Houston Corrugated Box Co.*, 526 F.2d 389 (5th Cir. 1976); *Scranton Construction Co. v. Litton Industries Leasing Corp.*, 494 F.2d 778 (5th Cir. 1974), *cert. denied*, 419 U.S. 1105, 95 S.Ct. 774, 42 L.Ed.2d 800 (1975).[23]

[14] Each defendant in this case, by affidavit of a responsible official and by answers to interrogatories, denied participation in any conspiracy or agreement to boycott Algerian crude oil. Appropriate officials from each company who were responsible for purchasing oil swore that the decision not to purchase Pan-Islamic's oil was made unilaterally and on the basis that Pan-Islamic's price was non-competitive.

In light of the evidence offered by the defendant oil companies rebutting Pan-Islamic's conspiracy allegation, Pan-Islamic must produce significant, probative evidence supporting its complaint. Pan-Islamic attempts to rebut the defendants' motion for summary judgment with both direct and circumstantial evidence of a conspiracy. Part of Pan-Islamic's circumstantial evidence relies upon the theory of conscious parallelism. *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537, 74

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23. *See Solomon v. Houston Corrugated Box Co.*, 526 F.2d at 393-394 for various formulations of the requirement upon plaintiff to counter a well-supported motion for summary judgment by defendants in antitrust litigation.

S.Ct. 257, 98 L.Ed. 273 (1954). We have thoroughly reviewed the evidence Pan-Islamic offers to rebut the defendants' summary judgment motion. This review reveals a total lack of any significant, probative evidence supporting the existence of a conspiracy. We first discuss Pan-Islamic's allegation that there was a French-sponsored boycott of Algerian oil, and then we discuss Pan-Islamic's reliance on the theory of conscious parallelism.

A. French-sponsored boycott

Pan-Islamic contends that the French government sponsored a boycott of Algerian oil beginning on February 24, 1971, and lasting through June 30, 1971, with its effects continuing to the end of 1971.[24]

The record is notably devoid of any direct or circumstantial evidence establishing the existence of any boycott of Algerian oil, either of a worldwide scope or by the defendant oil companies. There is no admissible evidence in the record demonstrating the pattern of worldwide sales of Algerian crude before, during or after the alleged boycott. Other than the alleged difficulties of Pan-Islamic, there is no admissible evidence that the Algerians or anyone dealing with Algerian crude had any difficulties in selling oil, nor is there any evidence of unusual price fluctuations of Algerian crude. There is nothing in the record establishing the defendant oil companies' need for Algerian crude or their purchasing habits with respect to Algerian crude before, during or after the alleged boy-

24. Pan-Islamic fails to explain what continuing effects there were after the end of the boycott on June 30, 1971. The record reveals that one of the contacts with Exxon by Pan-Islamic representatives occurred on July 1, 1971. Pan-Islamic has offered no theory explaining why Exxon's refusal to purchase Pan-Islamic's oil offered on July 1, 1971, can be attributed to a boycott ending on June 30, 1971.

cott. Although Pan-Islamic alleges that the French government together with French oil companies sponsored a boycott, there is no evidence from any French official or French oil company executive that they called for a boycott, nor is there any communication in the record of calls for boycotts directly from the French oil companies themselves.

Many of the factors the Supreme Court noted in dicta in *First National Bank of Arizona v. Cities Service Co., supra,* as supporting the existence of an English-supported boycott of Iranian oil in that case are lacking in this case. There is nothing in the record indicating the direct promulgation throughout the oil industry by the French government or oil companies of a threat to take all actions to protect their rights, including lawsuits, against those dealing in Algerian oil. *Ibid.* 391 U.S. at 278, 88 S.Ct. at 1585.[25] There is no indication of communication by the defendant oil companies of their support of the French position and of their intention to refuse to deal with any company dealing with Algerian oil. *Ibid.* There is no admissible evidence indicating that the numerous oil companies contacted by Pan-Islamic stated that their refusal to purchase its oil stemmed from fear of retaliation. *Ibid.* There is no indication of any threats by the defendant oil companies to boycott companies leasing tankers to transport Algerian oil. *Ibid.* Nor has Pan-Islamic established the holdings of the defendant oil companies in foreign countries where nationalization might be a threat. Such a fact, if established, might establish a

25. There were newspaper reports of French efforts to arrange a boycott and reports of French threats to sue any company purchasing the particular Algerian oil claimed by the French. As we note below, these newspaper reports are inadmissible to prove the truth of the existence of the alleged boycott.

motive for the oil companies to boycott Algerian oil after its nationalization of French oil. *Ibid.*

Pan-Islamic alleges that two organizations of oil companies, the London Policy Group and the New York Policy Group, were vehicles through which the oil companies established their boycott of Algerian crude. Many of the defendants, however, b ong to neither group. Those who are members denied that there was any discussion of Algerian oil or the problems between France and Algeria at any meeting. Pan-Islamic has not attempted to rebut these characterizations of the discussions at the meetings of these two groups.

Pan-Islamic contends that four evidentiary items establish a genuine issue as to the existence of the French boycott: (1) the affidavit of Arnold I. Burns, (2) the affidavit of Tyrus G. Fain, (3) reference by oil company officials to a dispute between France and Algeria, and (4) a statement allegedly made by Roland M. Routhier, an official with Texaco.

[15] Mr. Burns' affidavit consists primarily of statements allegedly made by Joseph Buchanan, the president of Petroco, to Mr. Burns or to representatives of Sonatrach in Mr. Burns' presence. Mr. Buchanan allegedly stated that the difficulty Sonatrach was having in selling its oil resulted from a boycott of Algerian crude. Fed. R. Civ. P. 56(e) requires that affidavits in support of or opposition to a summary judgment motion set forth facts that would be admissible in evidence. It is well established that hearsay evidence in such affidavits is entitled to no weight. 6 Moore's Federal Practice ¶ 56.22[1] (2d ed. 1979); *Munoz v. International Alliance of Theatrical Stage Employees, Etc.*, 563 F.2d 205, 213 (5th Cir.

1977); *Broadway v. City of Montgomery, Alabama*, 530 F.2d 657 (5th Cir. 1976). The statements which Burns attributes to Buchanan constitute hearsay under Fed. R. Evid. 801 and are inadmissible under Rules 802-804 to prove the truth of the matters asserted.

One portion of Mr. Burns' affidavit consists of his characterizations of the beliefs of Mr. Buchanan that there was a French-sponsored boycott. The various characterizations are either matters of which Burns is legally incompetent to testify under Fed. R. Evid. 602, or if relayed to him and offered in order to prove the truth of their contents, constitute inadmissible hearsay.

Mr. Fain was employed by Pan-Islamic to search newspaper files and various hearing reports concerning possible antitrust activities of the major oil companies. His affidavit merely states that the attachments to his affidavit are true and correct copies of articles and reference materials. Attached to his affidavit are newspaper articles (some in untranslated French), a lengthy excerpt from a book entitled, *The Control of Oil*, and a copy of a complaint filed in another antitrust action. All of this material is hearsay and is inadmissible to prove the truth of the existence of a boycott. Some of the newspaper reports indicate that French oil companies had threatened to sue companies purchasing the portion of the Algerian oil to which the French laid claim. While these newspaper reports are arguably admissible as public announcements enabling co-conspirators to coordinate their activity and while some oil company officials were aware of the threat,[26] these reports are nevertheless inadmissible to

26. Pan-Islamic did not allege before the trial court nor did it argue to this court, the newspaper announcement of the French companies' threat served as the medium by which the alleged co-

prove the truth of the existence of a boycott or even that such threats had actually been made.

Several oil company officials in depositions testified that they were aware of a dispute between France and Algeria concerning title and right to some of the Algerian crude oil and a threat by French oil companies to sue purchasers of the Algerian oil which they claimed.[27] None of these statements admitted the existence of a French-sponsored boycott. Nor did these statements in any way indicate that the French had solicited aid from any oil companies in connection with the French-Algerian dispute. There is no indication as to how these executives learned of this dispute and threat to sue, and there is no indication that the French government communicated in any way with these oil companies. There was nothing in these statements to suggest the oil companies had directly received threats from the French of retaliation should they buy Algerian oil. At most, the statements of the oil company officials reveal an awareness of a dispute between France and Algeria and a concern of possible litigation over legal title to any crude oil purchased from Algeria. Such a concern would be a legitimate factor in determining whether to purchase such oil. The statements in no way suggest that the reason the companies refused to buy Pan-Islamic's oil was fear of retaliation by the French. Indeed, Pan-Islamic states that it had a letter from Sonatrach which it showed to some of the defendant oil

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conspirators coordinated their efforts. Instead, the newspaper reports were offered to prove the fact of the existence of the French-sponsored boycott.

27. Deposition of Arthur Conner, Texaco, p. 23; deposition of Routhier, Texaco, pp. 27-30; deposition of Robert Doyle, Exxon, pp. 31-34.

companies, indicating that the oil was not subject to the French-Algerian dispute.

Out of more than 3,500 pages of deposition, not to mention numerous affidavits and exhibits, the most significant evidence to which Pan-Islamic can point in support of its allegation of a conspiracy is a statement Icsel attributes to Mr. Roland Routhier, a Texaco official in charge of the Supply and Distribution Department. Icsel, in his deposition, testified that during a meeting with Routhier at which Pan-Islamic offered its oil, Routhier stated, "If any others did buy a drop of oil from you, come over and we will buy the rest." The meeting at which this statement occurred lasted only thirty minutes. Icsel testified that he did not ask Routhier what he meant by this statement and that Routhier in no way amplified upon his remark. Icsel testified that the conversation with Routhier dealt only with generalities and there is no indication that Routhier's statement was anything more than a casual remark. Nor does Icsel's deposition indicate that Routhier's statement could be construed as a genuine offer to buy at Pan-Islamic's price should other companies purchase any of its oil.

Icsel's testimony concerning Routhier's statement is admissible as an admission by a party opponent. Fed. R. Evid. 801(d)(2). Accordingly, we must determine what inferences may be drawn from this statement. In evaluating Icsel's testimony, we are required to indulge in every reasonable inference in favor of Pan-Islamic. The court, however, need only make reasonable inferences. In this court's modification of the opinion in *American Telephone and Telegraph Co.*, we stated:

> Insofar as any weighing of inferences from given facts is permissible, the task of the court is not to weigh these against each other but rather to cull the universe of possible inferences from the *facts established* by weighing each against the abstract standard of reasonableness, casting aside those which do not meet it and focusing solely on those which do.

590 F.2d at 102. (emphasis added).

We believe that the ambiguity of Routhier's statement, together with the paucity of the established evidence, makes an inference of a conspiracy from Routhier's remark unreasonable. We make this holding in light of all the facts established in the record, including those discussed below with respect to Pan-Islamic's claim of conscious parallelism.[28]

[16] Having found the bulk of Pan-Islamic's evidence supporting a French-supported boycott inadmissible, and having found no evidence establishing a motive to joint a boycott of Algerian oil, Pan-Islamic in effect asks us to infer a conspiracy on the basis of Routhier's single statement, uncorroborated by other evidence. The statement is ambiguous, perhaps reflecting a willingness by Routhier to reconsider the competitiveness of Pan-Islamic's asking price should another company buy its oil. While it is undisputed that circumstantial evidence can establish

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28. We find below that Pan-Islamic has failed to establish a genuine issue of fact by means of a conscious parallelism theory as to whether the defendant oil companies conspired to boycott Algerian oil. Pan-Islamic failed to show it had effectively contacted eleven of the defendants to make an offer. With respect to the four companies contacted, Pan-Islamic has failed to rebut their evidence that they refused Pan-Islamic's oil because the asking price was not competitive. Thus, Pan-Islamic's reliance on conscious parallelism offers no support to an inference of participation in a conspiracy by the defendant oil companies.

the existence of a conspiracy in antitrust litigation, *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610 (1939), we have found no case where an inference of conspiracy was permitted based on such a slender reed.[29] Such a statement standing alone

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29. Representative of the cases in which an inference of a conspiracy has been held reasonable in a summary judgment context are:

Norfolk Monument Co., Inc. v. Woodlawn Memorial Gardens, Inc., 394 U.S. 700, 89 S.Ct. 1391, 22 L.Ed.2d 658 (1969) (In complaint that defendant cemeteries and burial monument manufacturer conspired to deprive plaintiff monument manufacturers of market in defendant cemeteries, evidence included facts that pamphlets circulated by one defendant among other defendants suggested competitive barriers to plaintiff retailers of burial monuments, that defendant cemeteries required burial monuments of specified alloy manufactured by co-defendant, that plaintiffs had presented evidence attacking the reasonableness of the requirement of a specified alloy, that defendant cemeteries attempted to dissuade purchasers from buying plaintiffs' monuments, and defendants' refusal to let plaintiffs install monuments plaintiffs sold); *cf. Moore v. Jas. H. Matthews & Co.*, 473 F.2d 328 (9th Cir. 1973) (similar facts and similar result.)

Poller v. Columbia Broadcasting System, supra (In allegation that defendant network conspired to drive plaintiff UHF station out of business, evidence included facts that in a short space of time, national network moved affiliation to competing UHF station purchased by individual at instigation of network, drove plaintiff UHF station which had been profitable out of business, and later abandoned second UHF station for VHF station, as well as a steady decline nationwide in UHF stations.)

Morrison v. Nissan Motor Co., Ltd., 601 F.2d 139 (4th Cir. 1979) (In allegation that automobile manufacturer and franchise dealers conspired to fix repair rates, evidence included facts that manual was distributed by manufacturer among franchisee retailers/repairers suggesting rates for repair, that franchisees had frequently corresponded with manufacturer/promulgator of manual concerning repair times and rates in manual, and statement by a service agent that manual rates were mandatory.)

DeVoto v. Pacific Fidelity Life Ins. Co., 516 F.2d 1 (9th Cir. 1975) (In allegation that mortgage company and seller of mortgage protection insurance conspired to deprive plaintiff seller of mortgage protection insurance of names of mortgagors, evidence included fact that plaintiff offered defendant mortgage company better package

is inadequate to support an inference of the existence of an agreement. It fails to constitute the "substantial factual evidence tending to show the existence of a conspiracy," as required by *Cities Service*.

B. Conscious Parallelism

Pan-Islamic alleges that it made an offer which was economically attractive to each of the defendant oil companies, but that each of the defendants rejected this offer. Such parallel conduct, Pan-Islamic argues, is sufficient circumstantial evidence to withstand a summary judgment motion.

[17] We note that two elements must be established by a plaintiff relying on a theory of conscious parallelism: (1) that the defendants engaged in consciously parallel action, (2) which was contrary to their economic self-interest so as not to amount to a good faith business judgment. *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp., supra; Aviation Specialities, Inc. v. United Technologies Corp.*, 568 F.2d at 1192. We find that Pan-Islamic has failed to establish a factual issue that eleven of the defendants engaged in consciously parallel conduct. With respect to the remaining four defendants, we find that Pan-Islamic has failed to establish a factual issue that their refusal to purchase was contrary to their economic self-interest.

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for names of mortgagors and that defendant companies were affiliated.)

We note that Pan-Islamic has failed to present facts as convincing in these cases indicating a conspiracy among the defendant oil companies. Pan-Islamic does not refer to, and we have not found, a case where an inference of a conspiracy was held to be reasonable solely on the basis of a statement as ambiguous as Routhier's.

(i) Parallel conduct.

Eleven of the defendants[30] denied by means of affidavits of responsible officials in the appropriate department in charge of purchasing that Pan-Islamic had ever contacted an official with authority to purchase crude oil.[31]

Pan-Islamic never contacted any of these eleven defendants in writing, nor did it keep a formal list of companies contacted. It is clear that there is no competent, admissible evidence that eight[32] of these eleven defendants were in any way contacted by Pan-Islamic. The bulk of the evidence offered by Pan-Islamic to demonstrate its contacts with these defendants consists of statements by various Pan-Islamic principals that each one thought, believed, or had been told, that someone else had approached one of the eight defendants. Pan-Islamic can point to no part of the record in which a representative of Pan-Islamic states that he has personal knowledge that any one of these eight defendants was ever contacted. Typical of the

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30. Amerada Hess, Amoco, Atlantic Richfield, Continental, Getty, Gulf, Mobil, Occidental, Phillips, Standard (Indiana), and Tenneco.

31. Pan-Islamic argues that *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434 (3d Cir. 1977), *cert. denied*, 434 U.S. 1086, 98 S.Ct. 1280, 55 L.Ed.2d 791 (1978), establishes that it need not prove it contacted each of the defendants to maintain its conscious parallelism allegation. We do not so read *Bogosian*. There the Third Circuit held that a complaint alleging oil companies engaged in interdependent parallel conduct by tying their products to leases of stations stated a cause of action even though the plaintiff had business dealings with only one of the defendants. There was, however, sufficient allegation of genuine parallel conduct, *i. e.*, each defendant tying its products with leases of stations. Accordingly, nothing in *Bogosian* can be construed as obviating in a conscious parallelism action the need to show parallel conduct among each defendant to be held liable.

32. Amoco, Atlantic Richfield, Continental, Gulf, Mobil, Occidental, Phillips, and Standard (Indiana).

state of the record was Icsel's testimony that he thought Ragan was contacting all the oil companies, which is contradicted by Ragan's testimony that he contacted only Exxon. Such evidence is either incompetent or hearsay and cannot establish a factual issue concerning contacts.

Pan-Islamic relies heavily on a memorandum prepared by Ragan to establish that all of the aforementioned eleven defendants were in fact contacted. The memorandum lists each of the sixteen defendant oil companies and identifies these defendants as firms to whom the availability of Pan-Islamic's crude allegedly had been made known. Beside each firm is a description of each oil company's initial reaction, generally optimistic, to Pan-Islamic's alleged offer. In his deposition, Ragan testified that he had personally contacted only Exxon and that the memorandum was prepared from information given him by George Foulkes, a principal in Pan-Islamic,[33] and other principals in Pan-Islamic. He could not remember who had given him any particular item of information, nor did he have personal knowledge of any contacts by Pan-Islamic with any of the defendants other than Exxon. The memorandum was written for the express purpose of proving to Sonatrach Pan-Islamic's efforts to sell the oil after Sonatrach had expressed concern over Pan-Islamic's inability to lift any of the crude. Ragan admits that with this purpose in mind, the memorandum was drafted in the best light possible.

[18] Pan-Islamic argues that the Ragan memorandum is admissible as a record of regularly conducted activity

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33. There is no competent evidence in the record concerning the activities of George Foulkes as he died on November 15, 1972, before this suit was filed.

under Fed. R. Evid. 803(6).[34] Without considering whether the Ragan memorandum complies with all the requirements for admissibility under Rule 803(6), we find the Ragan memorandum inadmissible because the circumstances of its preparation indicate a lack of trustworthiness. It was drafted not as part of a regular routine by Pan-Islamic to reflect the true state of its marketing efforts, but was drafted for the express purpose of preventing Sonatrach from cancelling the contract. As such, it was written in the most optimistic light Ragan thought the facts would warrant. As such, the memorandum appears to have glaring inaccuracies. For example, despite Ragan's testimony that the memorandum was prepared from information given him by Pan-Islamic's principals, none of those principals professed personal knowledge of any contacts by Pan-Islamic with at least eight of these defendants.[35]

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34. Fed. R. Evid. 803(6) reads:

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

35. As another example, the memorandum was drafted on June 10. It states that Pan-Islamic's offer to Exxon.

Is at vice president's level, are looking over their various refinery's requirements; expressed some concern over political implications-reverting.

Ragan stated he wrote this on the basis of Foulkes' having contacted someone at Exxon who expressed some interest in Pan-Islamic's oil

With respect to three defendants, Tenneco, Getty and Amerada Hess, there was contact with an employee of each of these companies, but the contact was insufficient to establish that their not buying Pan-Islamic's oil constituted parallel conduct, because there is insufficient evidence that a responsible official received an offer.

Mr. Romano, an investor in Pan-Islamic who was not engaged in the attempts to sell the oil, testified in his deposition that during the time in question, the president of Tenneco was his neighbor—a coincidence which understandably caused some concern to Tenneco's counsel. In a conversation with the president of Tenneco, literally held in a back yard, Romano mentioned Pan-Islamic's oil to Tenneco's president. Romano testified he did not have enough information to talk knowledgeably about the oil and he did not "push it." Nothing in his deposition indicates that he told Tenneco's president Pan-Islamic's asking price or said anything which could be construed as an offer. While the president of Tenneco is clearly a responsible company official, the fact remains that without evidence of an offer being made, Pan-Islamic has failed to prove Tenneco ever rejected its oil or acted in a manner parallel to those defendants which did receive an offer.

With respect to Getty, the only evidence of a contact is Musslewhite's deposition testimony that in a casual conversation with a friend who at the time was in-house attorney with Getty specializing in labor law, Musslewhite informed him of Pan-Islamic's oil. Musslewhite's

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and requesting Pan-Islamic to follow up. It was not until June 22 that Ragan followed up on this lead and made Pan-Islamic's first firm offer at $3.15 per barrel f. o. b. Algeria.

deposition fails to indicate whether he made an offer to the attorney or what information was conveyed. Significantly, Musslewhite did not remember what price he may have quoted to the attorney. Musslewhite asked the attorney to see if Getty "might be interested" in the oil. The attorney later told Musslewhite that Getty was not interested, but there is no indication as to whom the attorney contacted within Getty or what information the attorney may have conveyed to Getty officials.

With respect to Amerada Hess, Clark and Goodwin (vice-president and secretary-treasurer, respectively, of Pan-Islamic) stated in their depositions that they had contacted a company official at Amerada Hess's terminal at the Houston ship channel. They could not recollect the name of the official nor did they testify concerning his position. Clark did not describe the meeting, and Goodwin could not remember anything that was said at the meeting, indicating only in the most general of terms that it was part of his effort to sell the oil. Goodwin could not recall whether a price was quoted and could not remember whether the individual contacted expressed an interest or not. Goodwin testified that he thought Ragan was contacting another official with Amerada Hess.

Muslewhite's, Clark's and Goodwin's depositions fail to establish that either Getty or Amerada Hess engaged in the alleged parallel conduct of refusing to purchase oil from Pan-Islamic because there is no factual basis to conclude that an official with the necessary authority was aware of, and rejected, an offer by Pan-Islamic. It is hornbook law that before an employee may bind a corporation, that employee must have actual, implied, or apparent authority. While there is no question in this

case of binding these corporate defendants to a legal obligation, it is appropriate to require that, before the acts of their employees in rejecting Pan-Islamic's offer subject them to the possibility of antitrust treble damages, those acts be authorized by the corporation. This is particularly so with corporate defendants of this large size. Despite Getty's and Amerada Hess's sworn denial that appropriate officials in charge of purchasing were approached by Pan-Islamic, Pan-Islamic has failed to produce any evidence to the contrary. Accordingly, there is no factual issue as to whether Getty and Amerada Hess acted in a parallel fashion with those defendants clearly contacted.[36]

(ii) Economic interests of oil companies contacted.

Exxon, Shell, Texaco and Sun each admit receiving an offer from Pan-Islamic sometime in June or early July, which was refused, allegedly because of Pan-Islamic's noncompetitive price. As this is clearly parallel conduct, our inquiry turns to whether the refusal to purchase was contrary to these defendants' economic self-interest so as not to amount to a good faith business judgment.

Pan-Islamic and the oil companies agree that in the brokerage of crude oil, there is no set market-wide price. Price fluctuates rapidly, being affected by factors as diverse as the needs of various oil companies for certain

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36. In sustaining the summary judgment for Tenneco, Getty and Amerada Hess for failure to establish parallel conduct, we do not mean to preclude the possibility that summary judgment could be supported on the second prong of the conscious parrallelism theory, *i. e.*, that Pan-Islamic has failed to prove these three defendants acted contrary to their economic self-interest. There is no indication as to what price Pan-Islamic may have quoted to these defendants. Without such evidence, it is difficult to perceive how a factual issue exists that these companies acted against their economic self-interest.

types of oil, refining capacities and characteristics of companies and climatic weather patterns. It is agreed that each transaction involving the sale and purchase of crude oil is unique and stands on its own feet.

Each of the contacted defendants placed in the record affidavits of appropriate officials with purchasing responsibilities swearing that the decision not to purchase Pan-Islamic's oil was made unilaterally and was based upon the noncompetitiveness of Pan-Islamic's asking price. These companies indicated that they determined current market price largely on the basis of offers which their purchasing departments received and subsequent negotiations, or on purchases by subsidiaries. Each company submitted an affidavit containing the market price of oil of comparable quality which was being quoted to the company at that time or which a subsidiary was purchasing.

For the years 1970 to 1971, Exxon produced a high percentage of its crude oil needs, but nevertheless was required to purchase some crude oil. There is no indication as to the amount or grade of oil it purchased during this period. It obtained some of its oil needs from Libya and Indonesia, but the record is silent on other locales from which it was purchasing. Exxon was contacted on June 22 and July 1 by Mr. Ragan, who offered Exxon Pan-Islamic's oil at $3.15 per barrel f. o. b. Algeria. At the July 1 meeting, Ragan states he was told by Exxon officials that they had their own channels for obtaining oil. This is consistent with the affidavits and depositions of Mr. Doyle and Mr. Ellis of Exxon. They indicate that at the time Pan-Islamic made its initial offer to Exxon, Exxon had been engaged for over a month in direct negotiations with Sonatrach, initially discussing approxi-

mately 500 million barrels of oil at approximately $2.80 per barrel f. o. b. Algeria. These negotiations eventually resulted in a contract being consummated in October, 1971, between Exxon and Sonatrach for approximately 250 million barrels over a five-year period at $2.75 per barrel f. o. b. Algeria.[37] Ragan testified that he has no reason to believe that Exxon's decision to decline Pan-Islamic's offer was based upon anything other than price and knew of no facts to support the conspiracy allegation.

Texaco's needs for crude oil purchases during 1971 are not established by the record, although Texaco placed in the record the terms of all the contracts it or its subsidiaries had concerning Algerian oil during 1970 and 1971. In late spring or early summer of 1971, Pan-Islamic offered Texaco its Algerian crude at $3.05 per barrel f. o. b. Algeria. The record establishes that this price was well in excess of what Texaco's subsidiaries were paying for comparable grades of crude oil and well in excess of offers available to Texaco from others during that time. From October, 1970, through March, 1971, a Texaco subsidiary was purchasing from an Italian company 10,000 barrels per day of Algerian crude oil at $1.90 per barrel f. o. b. Algeria. In April, 1971, this transaction was renegotiated so that the Texaco subsidiary purchased refined products from the Italian company instead of crude. For the purposes of this renegotiation, the crude oil used by the Italian company was valued at $2.62 per barrel f. o. b. Algeria. On October 1, this contract was again renegotiated whereby the Texaco subsidiary re-

37. There is nothing indicating that this was the same oil which was the subject of Pan-Islamic's contract. The fact that negotiations between Exxon and Sonatrach began at approximately the same time that Pan-Islamic consummated its contract would indicate it is not the same oil.

sumed purchasing Algerian crude from the Italian company at a price of $2.62 per barrel f. o. b. Algeria.[38]

On May 26, Musslewhite and Clark visited J. K. Moore, an official with Shell with responsibility for purchasing crude oil. Pan-Islamic offered Shell its oil at $3.15 per barrel f. o. b. Algeria, indicating the price might be negotiable down to $3.05 per barrel. Moore by affidavit, indicates that when transportation costs from Algeria plus import taxes prevailing at that time were added to Pan-Islamic's price, Shell would be paying a minimum delivered price of over $4.00 per barrel for the Algerian crude at each of its refineries.[39] Moore indicated that during April through May, 1971, Shell was able to purchase its refining and marketing requirements for crude oil from domestic sources at delivered prices at least $.15 per barrel less than the delivered price of Pan-Islamic's oil.[40] At the same time, Shell had an offer of crude oil of comparable quality and grade as Pan-Islamic's oil at a delivered price of $3.19 per barrel to its Louisiana refinery.

Sun was contacted by telephone two times in May by Pan-Islamic representatives. In the second call, Pan-Islamic initially quoted a price at $3.15 and then told Sun the minimum price it would accept was $3.12 per barrel

38. In November, 1971, Texaco purchased a quantity of Algerian crude at $2.75 per barrel f. o. b. Algeria. In September, an official from Sonatrach offered Texaco oil at $2.80 per barrel f. o. b. which Texaco rejected as above market price.

39. Shell calculated the delivered cost to its Houston refinery at $4.03 per barrel, to its Illinois refinery at $4.205, and to its Louisiana refinery at $4.015.

40. At that time, Shell was purchasing domestic oil at a delivered price of $3.825 per barrel at its Houston refinery, $4.05 at its Illinois refinery, and $3.67 at its Louisiana refinery.

f. o. b. Algeria. Sun was told that Pan-Islamic had rejected an offer of $3.00. Sun was beginning to search for a long-term stable supply of low-sulphur foreign crude. Samples of crude oil from three locales had been obtained in order that their refinery characteristics could be determined. An affidavit by a Sun official stated that Sun had a long-standing policy to deal directly with national companies when negotiating a long-term arrangement. The affidavit indicates that Sun unilaterally rejected Pan-Islamic's offer because Pan-Islamic had furnished no samples of its crude and its offer was substantially above the market price at that time. Sometime after Pan-Islamic contacted Sun, Sun was able to purchase a much smaller amount[41] of Algerian crude at $2.93 per barrel f. o. b. Algeria. In late 1971, Sun entered a contract with Sonatrach for $2.77 per barrel f. o. b. Algeria.

Pan-Islamic has only weak rejoinders to these claims of sound economic reasons for refusing its offer.[42] Pan-Islamic claims that it made clear that its offering price was negotiable. The record does not bear this out with respect to Exxon, to whom Ragan was authorized to quote only a price of $3.15 f. o. b. Algeria. Ragan's deposition indicates that he adhered to this authorization and made no suggestion of negotiability. With respect to Sun, Texaco and Shell, the lowest negotiable price which the record indicates was offered to these companies, as indicated above, was well above the market-price as determined by these companies.

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41. The amount was 250,000 barrels.

42. Pan-Islamic offers absolutely no rebuttal to Sun's statement that it refused the oil also because it had been given no sample to test or to Shell's statement that whenever it needed to purchase oil at this time, it was able to meet its needs with purchases of domestic oil.

Pan-Islamic argues that it informed these companies that should a large oil company agree to purchase its oil, it could renegotiate its contract with Sonatrach to more favorable terms, to the advantage of all concerned. Pan-Islamic alleges that in July or August it was able, despite not having a firm offer, to renegotiate the price with Sonatrach down to $2.84 per barrel f. o. b. Algeria. Even if Pan-Islamic made known to the oil companies the possibility of renegotiating the Sonatrach contract, the oil companies' refusal to contract with Pan-Islamic on such a tentative condition hardly bespeaks the action against economic self-interest to establish a theory of conscious parallelism. Moreover, there is no evidence that Pan-Islamic ever contacted the defendant oil companies to re-offer its oil after the alleged renegotiation of price.

In attempting to show that the defendants' actions were against their economic self-interest, Pan-Islamic places its greatest reliance upon the affidavit of Prof. Helmut Frank, a professor of economics with expertise in the petroleum industry and on oil prices. Frank prefaces his remarks by indicating that oil companies have widely divergent needs with respect to crude oil because of the variety of finished oil products, inventories of crude on hand, location and types of refineries, and other factors. In evaluating Pan-Islamic's contract, Frank looked not at the particular companies' characteristics and needs, but only at general market conditions with respect to price. The most comfort Pan-Islamic may derive from Frank's affidavit is his conclusion that the price at which Pan-Islamic agreed to purchase from Sonatrach was "well within the range at which free arm's length sales of Algerian crude took place during the spring and early summer of 1971." Frank indicates that the range of Algerian crude oil at this time

was anywhere between $2.80 and $3.20 per barrel f. o. b. Algeria. In face of the lack of a single market price of Algerian crude, the practice of the defendants to rely on offers they received to determine market price, the range of oil prices for Algerian crude at this time, and the volatility of oil prices, a conclusion that Pan-Islamic's contract price was "within the range" of market prices is hardly significant probative evidence rebutting the sworn statements of company officials that they unilaterally determined Pan-Islamic's price to be noncompetitive.

Frank also evaluated Pan-Islamic's contract as a long-term contract in light of the option agreement for five years. He concluded that when account is taken of all existing facts as of the relevant date in 1971, including conditions that could have been anticipated as likely to occur over the option period, conditions he believed in all probability were known to the oil companies in 1971, Pan-Islamic's contract was desirable from an economic point of view. We conclude that this portion of Frank's affidavit is irrelevant. It is premised upon an assumption that Pan-Islamic offered the oil companies the benefit of the escalation clause. The record, however, does not bear out Pan-Islamic's argument, made for the first time on appeal, that Pan-Islamic offered the defendant oil companies a multi-year contract. Pan-Islamic's complaint made no allegation concerning a multi-year offer made to the oil companies. In the description given by the oil company executives of the offer received, no mention is made of the benefits of the escalation clause.[43] In making their contention that their refusal of Pan-Islamic's offer was unilaterally based on considerations of price, the oil

43. For example, Sun described the offer as being for 80 million barrels, the amount of Pan-Islamic's contract without the option.

company officials made no reference to the need to consider conditions for the next five years in reaching this decision. Despite having these affidavits in hand well before the trial court was to rule on the summary judgment motion, Pan-Islamic failed to rebut the oil company officials' characterization of the offer. In over 2,000 pages of deposition of Pan-Islamic officials, none stated that the benefits of the escalation clause were offered to the defendants. In fact, Mr. Musslewhite, who has represented Pan-Islamic for much of this case, described the offer as for one year during his questioning of Routhier.

Pan-Islamic states that the fact that the contract with the option agreement was left with the oil company officials creates a factual issue as to whether the escalation benefits were offered.[44] The record, however, indicates that the reason Pan-Islamic showed the contract to Shell and Texaco was to assure them that they did have a contract with Sonatrach and could deliver the oil. Even if the oil companies knew that Pan-Islamic had a multi-year option, that does not constitute a multi-year offer by Pan-Islamic. We believe that leaving the contract with the officials is not "the substantive probative evidence" of a multi-year offer which is required to preclude summary judgment.

Moreover, we note that Prof. Frank's affidavit was the last document filed by Pan-Islamic in opposition to the defendants' motion for summary judgment. In its arguments to the district court, Pan-Islamic failed to indicate that it believed a factual issue existed as to whether the escalation clause benefits were included in the offer

44. The record indicates that Sun and Exxon were never shown, much less given, complete copies of Pan-Islamic's contract with Sonatrach.

to the companies. This court has held that when a party moving for summary judgment assumes there is no factual controversy with respect to an issue, the opposing party's silence will preclude a belated argument on appeal based on some factual issue implicit in the underlying documents but not asserted before the trial court. *Franz Chemical Corp. v. Philadelphia Quartz Co.*, 594 F.2d 146 (5th Cir. 1979). The rule is appropriate in this case.

V. Conclusion.

After a thorough review of the record in this case, we conclude that the district court committed no errors. Our review of Pan-Islamic's amended complaint reveals a lack of standing with respect to most of the claims alleged. With respect to the claim with which Pan-Islamic arguably had standing, its original complaint sufficiently pled this claim. Accordingly, there was no abuse of discretion by the district court in denying leave to file the amended complaint. Pan-Islamic had sufficient opportunity to conduct discovery and failed to utilize profitably the time available. After its lackadaisical effort at discovery, Pan-Islamic was unable to respond to the defendant oil companies' motion for summary judgment, well supported by affidavits from responsible purchasing officials denying participation in any conspiracy to boycott Algerian oil. Because Pan-Islamic has not come forth with the necessary significant probative evidence of a conspiracy, either by direct evidence, circumstantial evidence, or evidence in the nature of conscious parallelism, the district court's decision to grant summary judgment is affirmed.

AFFIRMED.

APPENDIX 6

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT A

No. 78-1518

PAN-ISLAMIC TRADE CORPORATION,
Plaintiff-Appellant,
versus
EXXON CORPORATION, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas

ON PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC

(Opinion December 10, 1980, 5 Cir., 198_, __F.2d__).

(March 25, 1981)

Before COLEMAN, REAVLEY and ANDERSON,
Circuit Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge of this Administrative Unit in regular active service having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16; Fifth Circuit Judicial Council Resolution of January 14, 1981), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ R. L. ANDERSON
United States Circuit Judge

Clerks' Note:

See Rule 41 FRAP and Local Rule 17
for Stay of the Mandate

APPENDIX 7A

§ 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1 to 7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made or to which the commodity is to be transported for such resale, at the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1 to 7 of this title to be

illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.

APPENDIX 7B

§ 2. Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the dircretion of the court.

July 2, 1890, c. 647, § 2, 26 Stat. 209; July 7, 1955, c. 281, 69 Stat. 282.

APPENDIX 7C

§ 15. Suits by persons injured; amount of recovery

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Oct. 15, 1914, c. 323, § 4, 38 Stat. 731.

APPENDIX 7D

§ 19. Interlocking directorates and officers

No private banker or director, officer, or employee of any member bank of the Federal Reserve System or any branch thereof shall be at the same time a director, officer, or employee of any other bank, banking association, savings bank, or trust company organized under the National Bank Act or organized under the laws of any State or of the District of Columbia, or any branch thereof, except that the Board of Governors of the Federal Reserve System may by regulation permit such service as a director, officer, or employee of not more than one other such institution or branch thereof; but the foregoing prohibition shall not apply in the case of any-one or more of the following or any branch thereof:

(1) A bank, banking association, savings bank, or trust company, more than 90 per centum of the stock of which is owned directly or indirectly by the United States or by any corporation of which the United States directly or indirectly owns more than 90 per centum of the stock.

(2) A bank, banking association, savings bank, or trust company which has been placed formally in liquidation or which is in the hands of a receiver, conservator, or other official exercising similar functions.

(3) A corporation, principally engaged in international or foreign banking or banking in a dependency or insular possession of the United States

which has entered into an agreement with the Board of Governors of the Federal Reserve System pursuant to sections 601 to 604a of Title 12.

(4) A bank, banking association, savings bank, or trust company, more than 50 per centum of the common stock of which is owned directly or indirectly by persons who own directly or indirectly more than 50 per centum of the common stock of such member bank.

(5) A bank, banking association, savings bank, or trust company not located and having no branch in the same city, town, or village as that in which such member bank or any branch thereof is located, or in any city, town, or village contiguous or adjacent thereto.

(6) A bank, banking association, savings bank, or trust company not engaged in a class or classes of business in which such member bank is engaged.

(7) A mutual savings bank having no capital stock.

Until February 1, 1939, nothing in this section shall prohibit any director, officer, or employee of any member bank of the Federal Reserve System, or any branch thereof, who is lawfully serving at the same time as a private banker or as a director, officer, or employee of any other bank, banking association, savings bank, or trust company, or any branch thereof, on August 23, 1935, from continuing such service.

The Board of Governors of the Federal Reserve System is authorized and directed to enforce compliance

with this section, and to prescribe such rules and regulations as it deems necessary for that purpose.

No person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceeding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause,

whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Oct. 15, 1914, c. 323, § 8, 38 Stat. 732; May 15, 1916, c. 120, 39 Stat. 121; May 26, 1920, c. 206, 41 Stat. 626; Mar. 9, 1928, c. 165, 45 Stat. 253; Mar. 2, 1929, c. 581, 45 Stat. 1536; Aug. 23, 1935, c. 614, § 329, 49 Stat. 717.

APPENDIX 7E

Rule 803. Hearsay Exceptions;Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present sense impression.* — A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.

* * *

(6) *Records of regularly conducted activity.* — A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

* * *

(17) *Market reports, commercial publications.* — Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

* * *

(18) *Learned treatises.* — To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published creatises, periodicals, or pamphlets on a subject of history, medicine, or other science or

art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

* * *

(24) *Other exceptions.* — A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

APPENDIX 7F

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) *Definition of unavailability.*—"Unavailability as a witness" includes situations in which the declarant—

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), his attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) *Hearsay exceptions.*—The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

* * *

(5) Other exceptions.—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

* * *

APPENDIX 7G

Rule 7. Pleadings Allowed; Form of Motions

(a) *Pleadings.* There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

As amended Dec. 27, 1946, eff. March 19, 1948; Jan. 21, 1963, eff. July 1, 1963.

(b) *Motions and Other Papers.*

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(c) *Demurrers, Pleas, Etc., Abolished.* Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

APPENDIX 7H

RULE 56

SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

As amended Dec. 27, 1946, eff. March 19, 1948.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered

on the issue of liability alone although there is a genuine issue as to the amount of damages.

As amended Dec. 27, 1946, eff. March 19, 1948; Jan. 21, 1963, eff. July 1, 1963.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not

rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

As amended Jan. 21, 1963, eff. July 1, 1963.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

APPENDIX 8A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 74-H-463

PAN-ISLAMIC TRADE CORPORATION,
Plaintiff

v.

EXXON CORPORATION, ET AL,
Defendants

STATE OF ARIZONA)
ss.
COUNTY OF PIMA)

AFFIDAVIT OF HELMUT J. FRANK

Before me, the undersigned Notary Public appeared Helmut J. Frank, known to me, and after first being sworn did upon his oath make the following sworn statement, to wit:

1. My name is Helmut J. Frank. I am 55 years of age. I reside at 7218 East Camino Valle Verde, Tucson, Arizona, 85715. My phone number is (602) 298-5250. I am a Professor of Economics at the University of Arizona in Tucson, Arizona. My biographical sketch is attached as Exhibit A to this Affidavit, which Exhibit is incorporated herein by reference.

2. I do swear and affirm that the Economic Evaluation attached hereto is true and correct and I swear to the statements and opinions therein contained, such Economic Evaluation being marked Exhibit B and incorporated herein by reference.

3. I was requested by Mr. Benton Musslewhite of Houston, Texas to undertake an economic analysis of the Crude Oil Sales Agreement between Societe National SONATRACH and PAN ISLAMIC Trade Corporation, dated May 14, 1971. In that connection, I prepared the attached analysis, entitled "Economic Evaluation of the Crude Oil Contract Between Sonatrach and Pan Islamic Trade Corporation."

4. During the preparation of my report, it was necessary to rely on various sources of information. These sources include material thus far developed in connection with PAN ISLAMIC TRADE CORPORATION v. EXXON CORPORATION, ET AL; public information available from the oil trade press, general media, and professional journals; other information generally available to persons in the petroleum industry; and my personal background and knowledge of the operation of oil markets and energy markets and the factors influencing crude oil prices. Also, I utilize data gathered by National Economic Research Associates, Inc. (NERA), Los Angeles, California and a graduate student at the University of Arizona, Tucson, Arizona.

/s/ HELMUT J. FRANK
Helmut J. Frank

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public, on this 13th day of July, 1977.

/s/ JOYCE RINEHART
Notary Public

My commission expires
June 27, 1979

HELMUT J. FRANK

Address: Department of Economics, College of Business and Public Administration, University of Arizona, Tucson, Arizona 85721. Telephone: (602) 884-2529 or 884-1675. Home Address: 7218 E. Camino Valle Verde, Tucson, Arizona 85715. Home Telephone: (602) 298-5250. SS No.: 081-24-4753. Born: June 6, 1922, Koblenz, Germany. U.S. citizen, divorced, one child.

Education: Secondary schools in Europe and New York City. B.S. School of General Studies, Columbia, 1948, Major in Economics. M.A. 1950, PhD. 1961, Economics, both from Columbia.

Major fields: Industrial Organization, Price Theory, International Economics, Comparative Systems. Dissertation Topic: The Pricing of Crude Oil in the Middle East.

Awards and Honors: Dean's Honor Role, undergraduate work. Resources for the Future Fellow, Columbia, 1959-60. Phi Kappa Phi, Beta Gamma Sigma, Omicron Delta Epsilon, Outstanding Educator of America, 1975.

Research Experience: Research Assistant, National Bureau of Economic Research, New York City, 1949-50. Economist, W. J. Levy, Inc. (petroleum consultant), 1950-56; Director of Research, European Office, 1960-61. Economist, Industrial Economics Division, Denver Research Institute, Denver University, July 1, 1967-68. Consultant, 1968-

Teaching Experience: Lecturer, City College, New York, 1958 (part-time). Instructor, Princeton University, 1958-59. Asst. Prof., University of Arizona, 1961-63; Assoc. Prof., 1963-67; Professor, 1967-

Principal subjects taught: Price Theory, Regulation of Public Utilities, Managerial Economics, Business Forecasting, Energy Economics and Energy Policy. Member, Departmental Personnel Committee, Graduate Studies Committee, College Curriculum Committee, M.B.A. Program Advisory Committee.

Books and Chapters in Books:

CRUDE OIL PRICES IN THE MIDDLE EAST. A CASE STUDY IN OLIGOPOLISTIC PRICE BEHAVIOR, New York, F.A. Praeger, 1966.

"Prospects for Liquid Fuels from Unconventional Sources in North America," Ch. 4 in MIDDLE EASTERN OIL AND THE WESTERN WORLD, by Schurr and Homan, New York, American Elsevier, 1971 (with J.J. Schanz, Jr.).

"Natural Gas in the Future National Energy Pattern," in Keith C. Brown (ed.), REGULATIONS OF THE NATURAL GAS PRODUCING INDUSTRY, Johns Hopkins Press for Resources for the Future, (with J.J. Schanz, Jr.), 1972.

"The Future of American Oil and Natural Gas," chapter in The Annuals of the American Academy of Political and Social Science, THE ENERGY CRISIS: REALITY OR MYTH. November 1973. (with J.J. Schanz, Jr.).

"The Future Role of Electricity," chapter in THE CHANGING ECONOMICS OF WORLD ENERGY, Westview, 1976.

Monographs and Miscellaneous Publications

A GUIDE TO LONG-RANGE FORECASTING. Denver, Colorado, Future Requirements Agency, Uni-

versity of Denver, April 1970. FORECASTING LONG-RANGE GAS REQUIREMENTS, A MANUAL FOR USE BY FUTURE REQUIREMENTS WORK COMMITTEES. Denver, Colorado, Future Requirements Agency, University of Denver, April 1970. ENERGY CONSUMPTION BY STATES, HISTORICAL DATA AND PROJECTIONS TO 1975 AND 1980. Monograph, Division of Economic and Business Research, University of Arizona, (with J.E. Weber), June 1972 and November 1973. FUTURE NATURAL GAS REQUIREMENTS OF THE UNITED STATES, Volume No. 2, June 1967, "Evaluation". Denver, Colorado, Future Requirements Agency, University of Denver. ARIZONA ENERGY INVENTORY, A REPORT ON THE STATE'S ENERGY POSITION AND OUTLOOK TO 1985, Arizona State Fuel and Energy Office, February, 1975 and February 1977. THE ECONOMICS OF THE ENERGY PROBLEM, Joint council on Economic Education, Economic Topic Series, 1975 (with J.J. Schanz, Jr.).

Articles

"Problems of the Dollar and the Pound," QUARTERLY REVIEW OF ECONMICS & BUSINESS, Vol. V, No. 2 (Summer 1965), pp. 65-73. "Oil Tanker Rates: Light on Turbulent Waters," ANTITRUST BULLETIN, Vol. XII (Summer 1968), pp. 721-741. "The Fine Art of Forecasting Gas Demand: A Post-Mortem," PUBLIC UTILITIES FORTNIGHTLY, Oct 14, 1971. "Is There An Energy Crisis Ahead?—For Arizona?" ARIZONA REVIEW, April 1972. "United States Oil Imports: Implications for the Balance of Payments," NATURAL RESOURCES JOURNAL, July 1973 (with D. A. Wells). "Oil Imports BOP Threat Minimized," THE JOURNAL

OF COMMERCE, June 4, 1973 (review of above article) ."Economic Strategy for Import-Export Controls on Energy Materials," SCIENCE, 19 April 1974. "Energy Prospects and Options for Arizona," ARIZONA REVIEW, February 1975. "An Energy Policy for Arizona: Some Critical Issues," ARIZONA REVIEW, November 1976.

Government Activities

GOVERNMENT INTERVENTION IN THE MARKET MECHANISM, THE PETROLEUM INDUSTRY, PART I, ECONOMISTS' VIEWS. U.S. Senate, Hearings before the Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, pp. 339-363, (testimony and discussion). 91st Congress, 1st Session (1969).

United States of America Before the Federal Power Commission, El Paso Natural Gas Company, Docket No. RP72-6. PREPARED TESTIMONY ON BEHALF OF TUCSON GAS AND ELECTRIC COMPANY and expert witness testimony (May, 1972).

Committee on Interior and Insular Affairs, U.S. Senate, OIL AND GAS IMPORT ISSUES, 93 Congress, 1st Session, Hearings, Part 3, Appendix V, pp. 1101-07, COMMENTS (February, 1973).

Research in Progress

U.S.-Canadian Energy Trade Relationships (with J.J. Schanz, Jr. for Resources for the Future). Publication by Johns Hopkins Press pending.

Future Supplies and Prices of Imported Oil for the United States to 1990 (with John Lichtblau). In preparation for Electric Power Research Institute.

Survey of Regional and State Energy Model. Summer 1977, for University of Arizona.

Consulting Affiliations

W. J. Levy, Inc., New York, 1950-56; Paris, 1960-61. National Economic Research Associates, Inc., 1958-61, 1977-. University of Denver Research Institute, Gas Requirements Agency, 1968-. Petroleum Industry Research Foundation, 1972, 1976-. Electric Power Research Institute, Palo Alto, CA, 1974-. Edison Electric Institute, preparation of ECONOMIC GROWTH IN THE FUTURE, McGraw-Hill, 1976.

Professional Associations

American Economic Association. Western Economic Association. Western Social Science Association.

Other Activities

Expert witness before Florida Public Service Commission for City of Florida, Pompany Beach, June 1972. Expert witness before Tax Equalization Board, Kings County, California, on gas property valuation, May 1977. Rapporteur, Energy Policy Discussion Group, Resources for the Future, 1972-73. Rapporteur, Workshop on Modeling the Interrelationships Between the Energy Sector and the General Economy, Electric Power Research Institute, January 1976. Rapporteur, Workshop on the National Energy Outlook, National Science Foundation, Federal Energy Administration, August 1976. Member, Arizona Citizens Energy Task Force, 1975-. Member, Conservation-Technical Advisory Committee, National Gas Survey, Federal Power Commission, 1975-76. Member, University of Arizona Committee of Eleven, 1974-75. Member, University Committee on Committees, 1975-.

ECONOMIC EVALUATION OF THE CRUDE OIL CONTRACT BETWEEN SONATRACH AND PAN ISLAMIC TRADE CORPORATION

I. INTRODUCTION

This sworn statement represents an *economic evaluation* of the crude oil purchase agreement between Societe Nationale Sonatrach of Algeria and Pan Islamic Trade Corporation of Houston, Texas, signed on May 14, 1971. It analyzes market conditions prevailing as of that date, during the period immediately following while the agreement was in effect, and future conditions as they may have been reasonably expected by knowledgeable persons in the oil industry during the initial contract period plus subsequent optional extensions agreed to by the parties.

Crude oil is a raw material not generally used directly but subjected to further processing into a variety of finished petroleum products. Typically, it requires transportation to refining facilities, and the finished products must move further through a series of distribution channels to reach the final user. In these end use markets, petroleum products often compete with other sources of energy. Market conditions may vary significantly over time and with location. Also, individual companies engaged in the petroleum business may have widely divergent positions as regards the "mix" of the various finished products; volumes and types of supplies of crude oil (both owned and purchased); inventories on hand; available transportation facilities; size, location and types of refining facilities; etc. These individual company characteristics and positions are not examined in this sworn statement. It focuses instead on the general

market conditions which are the outcome of the interplay of all of the commercial forces, from both the demand and supply sides, impinging on the market as a whole.

In addition, both domestic and world oil markets long have been effected strongly by forces which are predominantly political in nature. This has been even more the case since 1970, when the Organization of Petroleum Exporting Countries (OPEC) first began to exert its newly found power in bargaining with the oil companies. Because of the essentially political nature of this power and because its manifestation was so recent in the spring of 1971, the normal uncertainties affecting the outlook for world oil during a period of five years ahead from the contract date were greatly magnified. This fact, in and of itself, has important implications for the present analysis, and an effort is made to take it into account to the extent this is possible some six years after the fact. Consistent with this perspective, the analysis tries to steer clear of events which have actually affected world oil markets during the contract period, but which could not have been reasonably foreseen at the time of signing.

The quadrupling of crude oil prices, which followed the imposition of the Arab embargo, in October 1973, was a development which could not have been foreseen as readily as a number of other developments which are discussed in Section V of this sworn statement.

II. ESSENTIAL CONTRACT AND RELATED PROVISIONS

The most important aspects of the contract itself, as they affect its economic values, are:

1. Purchase/sale of 80 million barrels of Algerian crude over a 12-month period beginning with the contract date, May 14, 1971.

2. Typical Algerian crude produced at Hassi Messdoud or of similar characteristics, with an API gravity in the range of 41.5-45.0° and a low sulfur content (less than 0.3 percent by weight).

3. Delivery and lifting at any of three Algerian ports (Arzew, Bejaia or La Skhirra).

4. A price of $2.98 per barrel, F.O.B. loading ports.

In addition to the contract, the parties signed a letter of intent (Lettre d'Intention), available only in the original French (Exhibit 1), which added these provisions:

1. An option to purchase an additional 40 million barrels per year in each of the four subsequent years.

2. A clause guaranteeing the price of $2.98 per barrel through June 30, 1972 for a maximum of 40 million barrels.

3. A provision linking the contract price to the posted price at Bejaia (which in turn was determined according to the formula agreed upon between the Libyan government and oil company representatives meeting at Tripoli); however, only 60 percent of the variations in the posted price was to affect the contract price.

III. CONDITIONS AT THE TIME OF CONTRACT SIGNING

World crude oil prices had risen sharply during the six to nine months preceding the conclusion of the con-

tract. For example, posted prices for Arabian light crude (34° API) at Ras Tanura, Persian Gulf, had increased from $1.80 per barrel prior to November 14, 1970, to $2.18 on February 15, 1971 and were scheduled to go up an additional 10.5¢ per barrel on June 1, 1971. Base posted prices in Libya had risen from $2.23 per barrel before September 1970, to $3.197 per barrel on March 20, 1971. In addition, a temporary short-haul premium, designed to reflect the location advantage of Mediterranean over Persian Gulf sources during the blockage of the Suez Canal and the prevalence of unusually high tanker rates, was included. It was based on a formula agreed to at Tripoli and amounted to 25¢ per barrel in May 1971. This brought the total posted price in Libya to $3.447 per barrel.[1]

Posted prices during 1971 were chiefly intended to serve as tax reference prices and should not be mistaken for market prices, but they were interrelated with market prices in a two-way relationship. Government payments based on posted prices, together with production costs and other costs, tended to set a floor under market prices; to sell below these costs would have resulted in losses to the companies. In turn, posted prices were themselves influenced by the level of market prices since market prices strongly affected the relative bargaining positions of producing countries and oil companies.

Specifically, the increases in posted prices during 1970-1971 were attributable to these factors:

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1. U.S. Department of the Interior, Office of Oil and Gas, *Worldwide Crude Oil Prices*, Technical Report 72-1, Quarterly Report, Fall 1971, Tables III and IX.

1. A shift from a prolonged buyers' market, which had prevailed since the late 1950s with few interruptions to a sellers' market. This shift was caused by an acceleration in the demand for energy generally plus an inability of other energy sources (coal, nuclear power and natural gas) to expand in line with demand increases. Oil was the only energy source available to meet the world's rapidly growing energy requirements.[2]

2. The OPEC countries, taking advantage of changing market conditions and their growing economic power and technical abilities generally, were able to extract substantially higher royalties and taxes from the private oil companies holding production and export concessions. In a series of negotiations in Libya (September 1970), Tehran (February 1971) and again Libya (April 1971), the government "take" was raised from about 90¢ per barrel to $1.30 per barrel in the Persian Gulf, and from $1.11 to over $2.00 per barrel in Libya.[3]

3. With respect to the "short-haul" crudes available at Mediterranean ports, the advantages these offered following the closing of the Suez Canal, since the 1967 Arab-Israeli war, have already been referred to. The strain on the tanker market was aggravated by the accelerating growth in the demand for petroleum products; by blockage of the Trans Arabian pipeline (Tapline) between May 1970 and January 1971 because of a dispute over transit fees; and by a sharp cutback in oil production ordered by the Libyan government in the

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2. Petroleum Industry Research Foundation, Inc., "The Current Residual Fuel Oil Shortage, An Analysis of Its Causes, Duration and Correctives," September 1970, pp. 3-13.

3. U.S. Department of the Interior, *loc. cit.*

spring of 1970. These factors made their combined weight felt in the tanker market; both spot rates and average fleet rates during late 1970 rose to about triple of normal, a level which had not been seen since the disruption of world oil flows during the 1967 war. (Exhibit 2.) They continued at abnormally high levels during the winter and early spring of 1971, although much reduced from their 1970 peaks, in line with the normal seasonal pattern.

The above developments are fully sufficient to explain the behavior of market prices for Algerian crude up to the time of contract signing. The comparatively low prices (about $1.92 per barrel) paid by Occidental and Texaco (Summary of Evidence, 13.E. and 13.I.) were representative of the pre-OPEC level of Eastern Hemisphere crude prices prevailing during the summer and early fall of 1970. The range of $2.80 to $3.00 per barrel to which representatives of Amoco and Standard Oil Company (Indiana) testified (Summary of Evidence, 13.A. and 13.F.) was typical of the much tighter market conditions, plus the OPEC-induced cost increases, in the spring of 1971.

Published sources confirm that market prices for Algerian crude were around $3.00 per barrel or even higher. According to *Petroleum Press Service,*[4] a widely read monthly trade publication generally believed to have close contact with the Royal Dutch/Shell Group, Algerian crude by mid-May 1971 was actually selling at around $3.00 to $3.20 per barrel. Two months earlier, the same source had calculated the "appropriate" price

4. *Petroleum Press Service,* June 1971, p. 205.

for Libyan oil at around $3.10 per barrel.[5] This would have made the value of Algerian crude $3.17 per barrel because of a 7¢ per barrel trade advantage of Algerian over Libyan oil on shipments west. The *Oil and Gas Journal* reported that Sonatrach had signed at least two new customers to long-term contracts at $3.05 per barrel, which according to this source was within the range of Algerian export prices in May of $3.00 to $3.05[6]

This evidence indicates quite conclusively that the price at which Pan Islamic agreed to purchase crude oil from Sonatrach ($2.98 per barrel) was well within the range at which free, arm's length sales of Algerian crude took place during the spring and early summer of 1971. The price at which Pan Islamic was willing to resell the oil, which included a margin sufficient to cover costs (quite small, on a per barrel basis, in this instance) plus a reasonable profit for entrepreneurial and risk function also was well within the range of going market prices in the late spring and early summer of 1971.

There is, additionally, the indication that Sonatrach was willing to negotiate a reduction in the price if it was presented with a firm back-to-back buying agreement from an oil refiner or oil consumer and such a reduction was necessary to comply with the terms of the offer (Affidavit of Arnold I. Burns). Such willingness may be interpreted as evidence that the contract price was close to a reasonable market price. For if it had been entirely out of line with market conditions, the offer could not

5. *Ibid.*, April 1971, p. 122.

6. *The Oil and Gas Journal*, June 14, 1971, p. 52.

have been sufficient to induce a buyer to purchase the crude, nor would Petroco or Pan Islamic have been in a position to risk concluding a resale agreement since in the absence of a firm commitment from Sonatrach (including agreement on the exact size of any reduction) the resellers would have incurred a risk of losing substantial sums on the transaction.

IV. CONDITIONS FOLLOWING THE CONTRACT SIGNING

During the summer of 1971, the tanker market eased very considerably. As Exhibit 2 shows, the monthly AFRA Large 2 rate continued to slide from its December 1970 peak, with only two brief interruptions (in March and May) for the balance of the year, as did AFRA rates for other types of vessels. These rates are widely used in the oil trade for price setting purposes; AFRA Large 2 was also accepted by the OPEC members for determining the freight advantage of Mediterranean crudes. More significant for market prices was the behavior of the single voyage (spot) market. This market is generally quite thin, since 80 to 90 percent of the tanker fleet is either owned by oil companies or on long-term charter to them. It is highly volatile, often fluctuating widely and quickly in response to sudden changes in market conditions or in expectations. Its significance lies in the fact that a fall in rates below the break-even point makes it more attractive for a buyer to charter vessels in the Persian Gulf for carrying crude oil to major markets (e.g., Northwestern Europe) than to purchase short-haul crudes in the Mediterranean. As a result, the marginal (spot) demand for these crudes will weaken and sellers are forced to compete more vigorously for any remaining

trade. In effect, a regionally limited buyers' market will have developed, which will tend to persist while tanker rates remain below the break-even level. Crude oil prices, of course, will reflect these conditions and profit margins will be compressed sharply. The break-even point for large vessels in 1971 averaged around W70; at this level Mediterranean crude no longer carried a freight advantage over Persian Gulf crudes. Spot rates fell below this level in July 1971 and again in September and October.

The origin of this turnaround in the market for crude oil is traceable to factors on both the demand and supply sides of the market. Oil demand temporarily slackened since mild weather during the preceding heating season in Europe and North America had left storage tanks filled. With the conclusion of the Tehran and Tripoli agreements, which settled outstanding disputes with the producing countries, the oil companies (and consuming countries) felt it safe to draw down these unusually high inventories. Supplies of short-haul crudes increased again in the spring of 1971 with the agreement in Libya, and in June, with the agreement on terms for shipment of Iraqi and Saudi Arabian crude from Eastern Mediterranean ports. In the tanker market, a large number of new deliveries and a return of combined carriers from nonoil trades enlarged available capacity.[7] At first, there was considerable disagreement among knowledgeable industry sources as to how long these conditions depressing the market for short-haul crudes might persist. By September it had become apparent that the large overhang of idle or underutilized tonnage would dampen even

7. *Petroleum Press Service*, October 1971, pp. 375-377, based on John I. Jacobs & Company, Ltd., "World Tanker Fleet Review, 30th June 1971."

the normal seasonal increase in tanker rates. These developments caused a significant weakening in the market for Algerian crude. Posted prices, which responded only through adjustments in the short-haul premium, were reduced 6.4¢ per barrel on October 1. (Exhibit 3.) By the last quarter of the year, a price of $3.00 per barrel was about 25¢ per barrel above the price at which competitive crudes (Libyan, Nigerian and Persian Gulf crudes, allowing for freight and quality differentials) were available. Because of these altered market conditions, the offer to purchase large volumes of Algerian crude at about $3.00 per barrel had become unattractive, insofar as the first year quantities were concerned.

V. THE OUTLOOK FOR THE RENEWAL PERIODS

Under the Letter of Intent, the parties agreed to an option to extend the contract for an additional four years, at a rate of 40 millon barrels per year. The question arises whether this feature of the agreement could have been considered attractive to potential buyers and, if so, to what extent this might have counterbalanced any negative aspects of the contract in the first year.

The option provided for the contract price to escalate with the base posted price (i.e., the posted price excluding the short-haul premium) at Bejaia, but only to the extent of 60 percent. In addititon, no increases was to occur on the first 40 millions barrels lifted, prior to July 1, 1972. Increases in posted prices of Algerian crudes were linked to those agreed to by the oil companies and the government of Libya at Tripoli, which in turn were modeled on the Tehran agreement covering Persian Gulf

crudes. It called, in essence, for an annual inflation adjustment of 2.5 percent plus 7¢ per barrel for Libyan oil (2.5 percent plus 5¢ per barrel for Persian Gulf oil), except that the first such increase, due on January 1, 1972, was already included in the initial price agreed to in the spring of 1971. (A 2¢ per barrel sulfur adjustment was scheduled to be made on January 1, 1972). The final adjustment was due on January 1, 1975, covering the period to December 31, 1975, when the agreements were due to terminate.

The resulting base posted prices for Algerian crude are shown in Exhibit 4. Beginning January 1, 1973, the annual percentage increases were to amount to about 4.5 percent. For the period as a whole (spring of 1971 through the end of 1975) they would have totaled slightly under 15 percent. The increases under the Pan Islamic contract would, over the same period, have totaled slightly less than 10 percent, i.e., only two-thirds of the percentage change in posted prices. The average annual percentage increase, slightly over 2 percent, was far below the general rate of inflation. Depending on the precise index used, this was then running in the 4 to 5 percent range.[8] (The figure of 4.5 percent in OPEC posted prices was intended to maintain the purchasing power of crude oil in terms of industrial goods, although some leaders of the oil producing countries felt it was too low.)

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8. The implicit price deflator for GNP in the United States increased by 4.8 percent in 1969, 5.5 percent in 1970 and 4.7 percent in 1971 (when a price freeze was in effect for part of the year). The Consumer Price Index showed similar increases. See *Economic Report of the President*, January 1973, Tables C-3 and C-44.

The limitation on future price increases provided for in the Letter of Intent must be judged a highly attractive feature of the sales agreement. It is questionable whether similar large quantities of crude oil comparable to Algerian could have been obtained, in the spring or summer of 1971, from Algeria or other sources, with price guarantees as attractive as those negotiated by Pan Islamic. It is even more doubtful whether any sellers would have been willing to give assurances of limited price escalation for as long a period ahead as Sonatrach granted to Pan Islamic. Only the owners of existing concessions in the Middle East and Africa are known to have obtained more favorable conditions against cost escalation in 1971.[9] But negotiating new concessions—and incurring the risks, delays and cash outlays involved—was really not a viable option for buyers requiring large volumes of low-sulfur crudes on short notice.

In addition to these predetermined changes in posted prices, informed oil company personnel were aware of several important issues which could easily have been expected to arise while the Tehran and Tripoli agreements were in effect. Whether or not these issues would be sufficient cause to reopen negotiations between the parties might become a matter of dispute. The critical question would be the interpretation of the doctrine of "changed circumstances," which it was generally acknowledged gave a sovereign power the right to consider the terms of any existing contracts inapplicable. Three such issues were changes in the value of the U.S. dollar, the demand by producing countries for "participation" in

9. Increases in tax paid costs under the Tehran and Tripoli agreements totaled about 14-15¢ per barrel. See U.S. Department of the Interior, *loc. cit.*

existing concessions, and the development of a tight market for petroleum products resulting in large profit increases to the private companies.

A change in the value of the U.S. dollar was of direct concern to the producing countries since oil prices were quoted in U.S. dollars, but payments were often received in other currencies. In the event of dollar devaluation (or depreciation of the dollar against other currencies) the real value of the producing countries' tax and royalty receipts would decline, since the prices of non-U.S. goods and services they purchased with their income would rise in terms of dollars.

Concern over the possibility of deterioration in the value of the U.S. dollar had been repeatedly expressed by OPEC leaders and was formally acted upon in December 1970.[10] It reflected the fact that the United States had been suffering large losses of gold and hard currencies over a long period of time and that there had been a series of currency "crises" which threatened to make the retention of the fixed price of gold far below its free market value untenable. The last such crisis had occurred in early May, only days before the signing of the Sonatrach-Pan Islamic sales contract. While the authorities once again had managed to restore a semblance of order to world currency markets, a few expressed confidence that future crises could be prevented. The Federal Reserve Bank of Chicago was among those who stated publicly that, in the absence of much closer coordination of both

10. OPEC Resolution XXI.122, adopted at the Twenty-First Conference in Caracas (December 9-12, 1970) stated "that in case of changes in the parity of monies of major industrialized countries which would have an adverse effect on the purchasing power of Member Countries' oil revenues, posted or tax reference prices should be adjusted as to reflect such changes."

domestic and foreign economic policies among major trading nations, a solution would require new currency arrangements (a euphemism for raising the dollar price of gold or letting it float against other currencies). (Exhibit 5). In fact, President Nixon was forced to suspend dollar convertibility by a renewed crisis, in mid-August 1971. A new set of currency values was negotiated later that year which reflected a depreciation of the dollar against other major currencies averaging about 8.5 percent. A second, even larger, devaluation occurred in early 1973.

It required little foresight on the part of experienced international traders, including the major oil companies, to anticipate these or similar changes by a few weeks. And it was certain that the OPEC countries would immediately call for changes in posted prices, based on a new formula that would take into account the value of currencies other than the dollar. (Such a formula was negotiated in Geneva in early 1972 and modified in 1973). Even moderately close analysis of the terms of the Pan Islamic agreement would have indicated that the buyer stood to benefit significantly in the event of an increase in posted prices induced by new currency arrangements, because of the limited price escalation provided for. Quantification in advance of the event would be a matter of speculation, of course, but it would have been entirely reasonable to base calculations on a relative decline in the value of the U.S. dollar in a range of 10 to 20 percent.

The second issue, participation, also had been widely discussed prior to the contract date; for example, Sheikh Yamani, the Saudi Minister of Peroleum, listed it as the next objective immediately following conclusion of the

Tehran agreement.[11] But the question had not been raised during the Tehran negotiations[12] and it was uncertain in mid-1971 whether it would be seriously pressed before the expiration of existing agreements, at the end of 1975. Nevertheless, the possibility that it might be could not be ignored in oil company planning. And while no direct price effect could be calculated without knowledge of details (e.g., on buy-back prices and quantities), the direction in which participation would affect crude oil markets, when it came, was unmistakable: the volumes of crude available to the concessionary companies would be reduced; companies with large surpluses (like British Petroleum and Gulf) would have smaller surpluses, and those which were already short of crude (like Shell, Standard of New Jersey and Mobil) would become even more crude short. True, some independent customers would be lost to the private companies since the government companies of producing countries would be competing in this trade. But the government companies were unlikely to push competition to the point of openly cutting prices (as distinct from granting indirect concessions), and the net result would very probably be a reduction in market suplies exceeding the reduction in demand. Again, the effect would tend to drive up market prices and buyers of Algerian crude tied into arrangements with Pan Islamic would stand to benefit.

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11. OPEC Resolution XXIV.135, adopted at the Twenty-Fourth Conference in Vienna (July 12-13, 1971) asked "that Member Countries shall take immediate steps towards the effective implementation of the principle of Participation in the existing oil concessions."

12. James E. Akins, "The Oil Crisis: This Time the Wolf is Here," *Foreign Affairs*, April 1973, p. 476.

The third factor, further strengthening of the market for petroleum products generally, and especially for products made from Algerian-type crudes, was being widely and continuously discussed during and preceding the summer of 1971. Exhibit 6, giving excerpts from a speech and report by a seasoned energy specialist to a group of financial analysts is typical. Demand for oil was expected to double over the next ten years, and the resulting pressures would drive oil prices up further. U.S. imports, especially from Eastern Hemisphere countries, were expected to increase sharply because of constraints on domestic and other Western Hemisphere supply sources.

Exhibit 7, taken from the keenly anticipated initial appraisal of the National Petroleum Council, in which representatives from virtually every major oil company participated, provides greater detail but arrives at a similar conclusion. It determined that, assuming prevailing trends continued and policies remained unchanged, U.S. oil imports would have to increase by 3.9 million barrels per day between 1970 and 1975 (and more rapidly in later years). Financial requirements would be huge, and energy costs would have to rise. Exhibit 8, giving excerpts from the November 1971 forecast by *The Oil and Gas Journal*, the most widely read oil industry publication, stresses that both the United States and the rest of the world were running out of cheap energy, and that the trend of oil prices, which had been downward for many years was changing direction. At times, markets might be tight and spot shortages were bound to occur.

While views such as these were widely, perhaps universally, held among active oilmen, many academicians disagreed strongly with the prediction that prices would be rising in coming years. This opinion was expressed most cogently by Professor M. A. Adelman, a professor of economics at M.I.T. who had closely studied the behavior of world oil markets and published a series of articles on the subject. (A major monograph was in preparation at the time.) The reasons why he felt that oil prices would decline during the 1970s was based on the fact that there was a wide margin between prevailing prices and real (resource) costs and that costs in major producing areas outside the U.S. showed no clear tendency to rise over time. This view was based in part on the conceptually correct notion that payments to the governments of producing countries were not true costs in the economic sense but were really economic rents, which are not a necessary cost and which tend to be squeezed out during periods of ample supply by the working of competitive market forces.

While Professor Adelman's conclusions follow quite logically from his assumptions, there was always doubt that his competitive market model on which his predictions rested applied to international oil. In addition, his model did not allow for the effects of changing control over world oil resources, with producing countries taking over the decision making voice from the private oil companies.[13] Resource exhaustion, and with it, an additional cost element, would have to be figured into the price determining calculation. Without developing the

13. The implicatoins of this basic change in the structure of the world oil industry are discussed by Walter J. Levy in "Oil Power," *Foreign Affairs*, July 1971, pp. 652-668.

full range of arguments on either of these issues, it is clear that disagreement with Professor Adelman's assumptions would lead one to arrive at very different conclusions as to the trend of oil prices. *Close examination of the trade press turns up no indication that any practicing oil company personnel agreed with the Adelman view, let alone that any company management was prepared to act on its implications.* And of course, the actual course of events since 1971 has amply demonstrated the irrelevance of the competitive model to the determination of world oil prices.

In addition to the general perspective on the trend of world oil prices, account should be taken of the special advantages offered by crude oil of the type produced in Algeria:

1. Near market location, a great advantage in case of a renewed tightness in the tanker market.

2. A serious shortage of low-sulfur fuel oil on the U.S. East Coast, and increasingly elsewhere in industrial markets.[14] The very low sulfur content of Algerian crude was likely to attract additional customers.

3. Potential advantages arising from being among the first to establish commercial relations with a leading government oil company. Algeria had repeatedly shown a willingness to favor its friends, e.g., in the terms granted to Getty and the sales price of the Mobil and Gulf crude contracts in the fall of 1970.

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14. Petroleum Industry Research Foundation, Inc., *op. cit.*, pp. 16-22.

VI CONCLUSIONS

On the basis of the above facts and considerations, the following conclusions are apparent regarding the price of Algerian crude under the Pan Islamic contract:

1. The terms on which Algerian crude was available to Pan Islamic and was offered for resale were within the range at which comparable crudes were being traded in the spring and early summer of 1971.

2. During the late summer and fall of 1971, the market for the various crudes available at Mediterranean ports weakened significantly as a result of depressed tanker rates. A price of $3.00 per barrel or above for short-term purchase (up to one year) was no longer competitive after mid-summer.

3. The option to extend the contract for an additional four years with limited price escalation should have been highly attractive to a prospective buyer for reasons set forth above.

4. It is my opinion that when account is taken of all existing relevant data, of indications of conditions that could have been anticipated as likely to occur over the five-year period of the contract and renewal option, and of the fact that such information was in all probability known by the major oil companies in May and June of 1971, the offer of Pan Islamic to the major oil companies, based upon its contract and option with Sonatrach, was a desirable offer *from an economic point of view.*

EXHIBIT 1

LETTRE D'INTENTION

Suite aux entretiens qui ont eu lieu dans les bureaux de la Société Nationale SONATRACH Division Commercialisation les 12 et 14 mai 1971 entre les représentants de la SONATRACH et ceux de la PAN ISLAMIC TRADE CORPORATION, il a été convenu qu'une option portant sur les quantités de QUARANTE MILLIONS DE BARILS par an (40.000.000 barils/an) pour une périod de 5 années, est accordée à PAN ISLAMIC TRADE CORPORATION.

PAN ISLAMIC TRADE CORPORATION dispose de QUARANTE CINQ jours (45 pour lever cette option. Au plus tard le 30 Juin 1971 PAN ISLAMIC TRADE CORPORATION doit faire connaitre à la SONATRACH son intention d'enlever ou non ces quantités. Dans le case positif ces quantitiés seront livrées au prix de base de DEUX DOLLARS QUATRE VINGT DIX HUIT CENT (2.98 US $) le baril FOB ports de chargements.

Ce prix sera indexé sur les prix postés définis par l'accord de Tripoli du 2 Avril 1971. Le prix posté servant de base est celui de Béjaia le 14 Mai 1971.

Seulement 60% de la variation affecteront le prix de base. Il es entendu que le port de référence de prix posté sera le port de Béjaia, Algéria.

Si toutefois l'option est levée avant le 30 Juin 1971 et 40% au plus des quantité annuelles convenues par les deux parties sont enlevées d'une manière réguliè: men-

suelle par l'acheteur entre le ler Juillet 1971 et le 31 Décembre 1971, le prix appliqué pendant la période du ler Juillet 1971 jusqu'au 30 Juin 1971 sera maintenu à US $ 2.9? baril FOB ports de chargement jusqu'a concurrence de 40 MILLIONS de barils.

Un contrat sera signé en cas d'accord entre les deux parties.

Pour la PAN ISLAMIC TRADE CORPORATION

/s/ Benton Musslewhite
B. MUSSLEWHITE
Attorney-in-fact

par la SONTRACH

By: N. ABDERAHIM

EXHIBIT 2

TANKER FREIGHT RATES
1970-1971

WORLDSCALE=100.0

Date	Monthly AFRA[1] Gen Purpose (1)	Med (2)	Large 1 (3)	Large 2 (4)	Single Voyage (Dirty)[2] (5)
1970					
Jan.	115.4	102.2	78.6	68.9	115
Feb.	111.7	102.2	78.0	69.4	120
Mar.	111.3	100.2	78.0	69.6	130
Apr.	113.5	105.2	82.0	72.2	132
May	117.2	107.4	82.2	73.0	129
Jun.	118.4	105.0	80.9	72.4	176
Jul.	124.1	110.4	82.0	73.5	213
Aug.	136.4	125.9	92.1	79.6	214
Sep.	146.6	139.3	99.8	85.4	252
Oct.	157.5	148.1	103.9	90.3	289
Nov.	170.4	156.8	109.7	95.2	285
Dec.	168.5	152.4	114.7	97.9	218
1971					
Jan.	158.8	142.8	111.2	94.7	202
Feb.	143.0	133.5	107.8	90.7	163
Mar.	133.8	103.3	109.6	91.2	147
Apr.	130.3	125.7	106.3	89.5	112
May	123.6	119.1	103.2	90.2	101
Jun.	118.8	114.7	101.4	88.8	77
Jul.	114.6	110.5	99.3	86.1	64
Aug.	116.1	111.2	97.0	83.4	77
Sep.	117.6	109.3	95.6	81.3	62
Oct.	116.3	107.8	91.4	80.9	69
Nov.	118.4	107.6	87.9	79.4	80
Dec.	116.7	103.5	86.4	75.8	94

1. London Tanker Brokers' average freight rate assessments, calculated on the basis of rates prevailing during the month ending on the 15th of the month shown, and used by oil companies for pricing purposes during the following month.

2. Average of weekly figures published by Mullion Tankers (Shipbrokering) Ltd.

Source: *Petroleum Press Service, London* (monthly).

EXHIBIT 3

POSTED PRICE OF ALGERIAN CRUDE OIL SONATRACH, F.O.B. BEJAIA (BOUGIE)

1971

Effective Date	Base Posted Price	Short-Haul Premium	Total Posted Price	API Gravity
	(Dollars per Barrel)			
	(1)	(2)	(3)	(4)
Jan. 1	$2.650[1]	$ —	$ 2.650[1]	40.00-44.50°
Mar. 20	3.350	.250	3.600	40.00-40.09°[2]
Jul. 1	3.350	.266	3.616[3]	44.00-44.09°[2]
Oct. 1	3.350	.202	3.552	44.00-44.09°[2]

1. U.S. Department of the Interior, Office of Oil and Gas, *Worldwide Crude Oil Prices*, Technical Report 72-1 Quarterly Report, Fall 1971. Table VI, lists the price as of January 1, 1971 as $2.70 per barrel.

2. The price will increase by 0.2¢ per barrel for each 0.1° above 40.00°, and will decrease by 0.15¢ per barrel for each 0.1° below 40.09°. (Beginning July 1, these adjustments presumably applied above 44.00° and below 44.09°, respectively.)

3. U.S Department of the Interior, Office of Oil and Gas, *Worldwide Crude Oil Prices*, Technical Report 72-1, Quarterly Report, Fall 1971, Table VI, lists the price as of July 1, 1971 as $3.576 per barrel.

Source: *Petroleum Press Service*, London (monthly).

EXHIBIT 4

COMPARISON OF CONTRACT PRICE AND BASE POSTED PRICE OF ALGERIAN CRUDE

1971-1975

Date	Contract Price			Base Posted Price[2]		
	Dollars per Barrel (Dollars) (1)	Change (Dollars) (2)	Percent Change (Percent) (3)	Dollars per Barrel (Dollars) (4)	Change (Dollars) (5)	Percent Change (Percent) (6)
May 14, 1971	$ 2.980	$ —	—%	$ 3.350	$ —	—%
Jan. 1, 1972	2.980[3]	—	—	3.370[4]	.020	+0.6
Jul. 1, 1972	2.992	.012	+0.4	3.370	—	—
Jan. 1, 1973	3.084	.092	+3.1	3.524	.154	+4.6
Jan. 1, 1974	3.179	.095	+3.1	3.682	.158	+4.5
Jan. 1, 1975	3.276	.097	+3.1	3.844	.162	+4.4
Total Change		$ .296	+9.9%		$ .494	+14.7%

1. Terms from Letter of Intent.

2. Excludes short-haul premium. Calculated according to Tripoli agreement (annual increases are equal to 2.5% plus 7¢ per barrel).

3. Applies to first 40 million barrels only. Additional liftings would be at $2.992 per barrel.

4. 2¢ per barrel sulfur adjustment provided in Libyan agreement.

EXHIBIT 5

Excerpts from: "Anatomy of an International Monetary Crisis," *Business Conditions*, A Review by the Federal Reserve Bank of Chicago, May 1971, pp. 12-20.

After weeks of increasingly heavy activity in the foreign exchange markets, monetary authorities of Germany, Switzerland, the Netherlands, Belgium, and Austria in May ordered cessation of trading in foreign currencies in the markets under their jurisdiction. The market closings were prompted by increasingly large flows of speculative funds that disrupted normal trading and threatened to inundate governmental treasuries with a flood of "hot" money. (p. 12)

Continuing U.S. deficits added to the supply of liquid dollars held by foreigners. As this total continued to increase—and U.S. reserves of gold continued to decrease—the concerns that first emerged in the early Sixties intensified. The devaluation of the British pound in November 1967 triggered expectations of similar action on the part of the United States. Heavy speculative buying of gold developed . . . (p. 17)

A number of policy measures adopted by U.S. and European authorities in efforts to reduce the flows of interest-sensitive dollars proved inadequate. The obvious difficulties encountered by the authorities . . . gave rise to suspicions that the authorities in some countries abroad might resort to currency revaluation . . .

These concerns generated demand for foreign currencies, and soon the process gained its own momentum . . .

On May 4, over $1 billion was reportedly absorbed by the German Central Bank . . . The next day, the flood turned into a deluge . . . The international monetary crisis of 1971 reached its crest. (pp. 19-20)

Only the passing of time will tell how effective these measures will be in eliminating the fundamental disequilibrium that was the underlying cause of the most recent crisis. The lesson for the future, however, is clear: to avoid further disruptions, all nations . . . must work together to harmonize their international economic policies and their divergent domestic economic goals . . . or they must work together on modifications of the system so that it can accommodate diversity. (p. 20)

EXHIBIT 6

Excerpts from: Gerard C. Gambs, Director of Special Projects, Ford, Bacon & Davis, Inc., "The Twentieth Century Fossil Fuel Crisis: Current and Projected Requirements," February 12, 1971.

With regard to world oil, it is anticipated that demand will double in the next 10 years and that current world requirements of about 45 million barrels per day will increase to 90 million by 1980. Thus will place increasing pressures on oil prices and it is forecast that they will continue to increase (p. 3)

[I]t is anticipated that only half of United States demand for oil of approximately 25 million barrels per day by 1980 will be met by production from the United States, Canada and Alaska, and the other 12½ million barrels per day will have to be supplied by imports, synthetic fuel, etc . . . It is clear that both Europe and the United Etates will become increasingly dependent

on imports of oil from these three oil-rich areas [Africa, Asia and the Middle East]. (p. 4)

EXHIBIT 7

Excerpts from: "U.S. Energy Outlook, An Initial Appraisal 1971-1985," An Interim Report Prepared by the National Petroleum Council's Committee on U.S. Energy Outlook, Volume One, July 15, 1971.

Annual new investment required to finance development of natural resources and construction of new facilities would greatly exceed the levels of recent years. Funds provided from operations of energy industries at present price levels would fall far short of meeting these capital requirements. Environmental regulations affecting the supply, transportation and consumption of all fuels would further increase investment costs. All these things indicate increasing energy costs. (p. 7).

Total "normal" domestic demand for liquid petroleum products was projected in the initial appraisal . . . to grow at a rate of 3.8 percent a year, increasing from 14.7 million B/D in 1970 to almost 26 million B/D in 1985. . . . [i]t will take only a small shortfall in other fuels to drive petroleum needs above the 26 million B/D level. (p. 23).

Future conditions may be such that the demand for residual fuel oil could grow even faster than the projected rate of 4.5 percent a year. Instead of reaching 4.3 million B/D in 1985, it could possibly reach 5.0 million or even more, depending on the limitations affecting the supplies of other fuels and on the impact of environmental controls.

. . .

. . . Increasing stringent requirements in the environmental area can be expected to raise the total fuel consumption, refining investments and fuel costs. (p. 24).

Domestic production of conventional crude oil, excluding the Alaskan North Slope, was projected to increase slightly in the next one to three years, but to decline thereafter. By 1975, crude oil production (excluding the North Slope) would be 8.55 million B/D compared to 9.1 million B/D in 1970. (p. 25)

Imports are assumed to provide the remainder of U.S. oil supplies for purposes of this initial appraisal. . . .

. . . [Imports] from Canada are projected to more than double by 1985, reaching 1.9 million B/D. . . . The balance of U.S. needs is met from overseas imports which could grow from about 2.5 million B/D in 1970 to approximately 12.9 million B/D in 1985. (p. 26)

[P]ractically all of the growth in overseas imports must come from the Eastern Hemisphere [countries]. Any significant growth in imports from the Latin American countries can only occur, in effect, by displacing oil produced there with Eastern Hemisphere oil for local consumption. (p. 28)

Based on the stated levels of total demand and domestic production, total imports into the United States would have to increase by 3.9 million B/D, or over 100 percent between 1970 and 1975. The level of imports would increase substantially thereafter, reaching 14.8 million B/D by 1985. . . . [T]he bulk of supplementary supplies would have to be in the form of imports from overseas sources. (p. 29)

EXHIBIT 8

Excerpts from: George Weber, "Petroleum and the Energy Crunch, World's Appetite for Oil to Hit 85 Million B/D by 1980," *The Oil and Gas Journal*, November 15, 1971, pp. 121-136.

The U.S. is, however, running out of *cheap* energy. The same can be said of the world at large. And this does threaten a crisis or a crunch or whatever economists choose to call the momentous change in directions now taking place in energy prices. . . .

. . . The year 1971 is likely to go down as a "watershed" year—one of those periods when many unexpected, unplanned, and unforeseen events coincided to support the same end result.

. . .

Additional domestic oil and gas will be brought into production, of course. But the finding will be more difficult and costly. . . . [C]oal, heavy oil, black oil, tar sands, and shale oil . . . cannot . . . be extracted at the turn of a valve. They now cost more to recover than flush oil and gas production. And they will cost successively more than convience fuels to which Americans have become so accustomed.

. . . [T]he promise of nuclear power remains just that: a promise. (p. 121)

No matter whether a free market or a controlled one emerges, energy's price is going up. . . .

. . .

Price today probably represents the greatest unknown. We know it is rising but how much remains the question. . . .

The Seventies have already brought on some surprises. Environment and foreign government action were two big ones. We can count [on?] many more.

. . .

Although the Journal's estimate of 2 years ago stood above nearly all other forecasts for the Seventies, it appears that everyone erred on the low side. There were good reasons for this, environment being one of them and Arab politics another.

. . . One reason [for the higher projections now] is the swing from coal to lower-sulfur heavy fuel oils in the U.S., which may be repeated abroad. The move to oil from natural gas in electric-power generation is another factor. . . . A third reason . . . is the basic one: 2 years ago the estimates were based on too low a level in 1970. (p. 123)

It appears that total oil demand during the decade [of the 70's] may well top that for all oil history prior to the 1970's. The current projection calls for the disappearance of some 230 billion bbl. of oil in the 10 years beginning Jan. 1, 1970. . . .

We are looking at more oil in these 10 years than in the 110 that preceded the 1970's.

. . .

But coal has suffered its greatest recent blows from another environmental factor: sulfur. (pp. 123, 125)

[I]n city after city, up and down our East Coast and across to our populous Midwest, the sulfur content of fuels was reduced by law to levels which ruled out most of our domestic solid fuels.

. . . As an industrial fuel it [coal] has suddenly been replaced by heavy fuel oil. Natural gas would have been more desirable a fuel at least for the environmentalist, but just as suddenly, gas, too, became unavailable for such use. . . .

. . . [N]ew nuclear plants have escalated beyond imagination. . . . Some regional restrictions on nuclear power plants have become so punitive they threaten to rule this source out of the economic picture.

. . .

Natural gas here at home is probably subject to the greatest price increase of all energy sources. . . . Now, too late to avoid a supply crunch of sorts, the FPC is liberalizing field prices. . . .

. . .

. . . For different reasons gas, coal, and the atom are for the present shifting some of their load to that old standby [oil].

Worldwide, oil is still in plentiful supply and recoverable reserves plus prospects for more, indicate no shortage for years to come . . . but we are looking at an end to cheap oil. Everywhere. (p. 127)

The threat of a massive production shutdown used very effectively during last winter's negotiations still hangs over OPEC crude. As a result, the international industry

charged with maintaining oil supplies is diversifying crude sources as rapidly as possible. . . .

. . . [T]he search elsewhere, while successful in turning up new crude reserves, is of itself increasing the average cost of world crude oil. . . . In essence, the easy, low-cost oil and gas have already been found. (p. 129)

Where then, will those industrial customers turn for their energy? In most cases they can go only one way, for the present—to oil. . . .

Already, low-sulfur residual oil has assumed a tremendous new load from this unexpected environmenal move. . . .

The price of low-sulfur heavy oil has moved up accordingly, and now it has once more become a reasonably attractive product for domestic refiners. But . . . we seriously question whether enough of an oil supply can be mustered in so short a time. (p. 135)

The premise that we are not running out of energy—just cheap energy—does not preclude some brownouts and some cold customers in the next few years. Spot shortages in so tight a situation are bound to occur. (p. 136)

APPENDIX 8B

EXCERPTS FROM RECORD RE OFFER OF OIL COVERED BY PRICE LIMITATION CLAUSE

> "A purported copy of the English translation of the Pan-Islamic contract with Sonatrach (with the price of the crude deleted) was left with Texaco, *together with a copy of a letter dated May 14, 1971 from Sonatrach to Pan-Islamic.*" (Rec. 1300, Emphasis ours)

"This person offered to sell crude oil, the subject of Pan-Islamic's purported contract with Sonatrach, . . ." (Routhier affidavit in Document 246 of the supplemental record) and that "although I cannot recall the exact terms of the offer made by Pan-Islamic's representatives, they offered to sell crude oil, the subject of its purported contract with Sonatrach. . . ." (Connor's affidavit in Document 246 to the Supplemental Record).

> "Question: Do you recall whether or not you were shown another document, such as an option to acquire 40 million barrels a year after 1971?
>
> Answer: I don't recall."
>
> (Pages 54, 55 of Routhier deposition)

"I have a very vague recollection of the meeting." (Page 55, Routhier deposition).

> "Question: Do you recall the terms of the contract Pan-Islamic had with Sonatrach?
>
> Answer: Exactly, no, sir.
>
> Question: Do you recall anything about that contract?

Answer: *It was for a large quantity for several years . . .*" (Page 63, Routhier deposition, Emphasis ours).

"Question: Do you recall discussing a long term contract for the acquisition of that oil over a five year period?

Answer: *I believe it was purported that the oil was available for that period.*" (Page 86, Routhier deposition).

"Well, they (price re-opener) could have various forms. And this is negotiated by the parties who enter into contracts. An example of price re-opener clause could be that one enters into a one year volumetric contract for certain quantities to be delivered on a rateable basis with the idea that the parties will sit together at the end of a 90-day period to agree on what the price might be for the succeeding quarter. Failing in agreement the parties are free to back away." (page 88 of Routhier deposition).

"Pan-Islamic had access to Algerian crude oil, and wished to know if Texaco was interested in purchasing it". (p. 49, Connor Deposition).

"(Texaco and Petitioner) had about a half-hour meeting and talked over us having this contract and the basic points" (page 81, Icsel deposition).

"Question: . . . did you ever tell him how much Algerian crude you had for sale at that time?

Answer: We told him what we had at the time, yes.

Question: You told him the amount under the contract?

Answer: Yes"

(Icsel deposition, pages 333, 334).

"We showed him (Connor and/or Routhier of Texaco) our contract without the price indicated therein to show him we had the credibility to be dealing in the oil." (page 633, Musslewhite deposition).

> "I always had them (the contract, option, etc.) with me and I normally showed the contract and the technical data relating to the oil, *and the other addendums to the contract,* such as lifting requirement in Arzew and things like that." (Musslewhite deposition, page 633, Emphasis ours).
>
> "Question: . . . Was any kind of writing entered into with Mr. Connor while you were there?
>
> Answer: No sir; not that I recall. We . . . I believe we left him copies of our documents. I believe we did.
>
> Question: You say your documents, referring to your contract with Sonatrach?
>
> Answer: Of the contract.
>
> Question: And the letter?
>
> Answer: The letter, *the option,* the various technical things, several shipping requirement documents that were attached to it. I think I would have left him all that, and I believe I did . . ." (page 656 of Musslewhite deposition, emphasis ours).

"Pan-Islamic Trade Corporation offered to sell crude oil, the subject of its contract with Sonatrach, . . ." (Rec. 2019, Affidavit of Moore of Shell).

"We (Shell) were shown . . . (Pan-Islamic's contract) with several parts of it deleted" (Moore deposition 61, 62). "Do you recall seeing documents other than the contract such as options for succeeding years?" "I don't recall. . . ." (page 62 of Moore deposition).

Question by Petitioner's Counsel: "The documentation you have with regard to that transaction or negotiation or as you call it 'visit' (with Pan-Islamic representatives), is that memorandum you prepared for file?

Answer: Correct.

Question: Did you retain copies of any of the technical data or contracts . . . *Mr. Simon* (attorney for Appellee Shell): Subject to your giving us a Rule 34 motion.

Question: Are those available? Are those available subject to your counsel's approval?

Answer: I don't know what is available in the file. . . ." (page 67, 68 of Moore's deposition).

"Mr. Bledsoe, with the Bledsoe group, set up a meeting with Mr. Moore and another gentleman at Shell Oil. We went over and talked to Mr. Moore and this other gentleman about Algerian crude oil. They already knew the price. They asked before we came over. So, apparently, we assumed, price was no object. When we got there we talked to Mr. Moore and the other gentleman I would say for fifteen or twenty minutes. At this time they asked for the contract. Mr. Moore read the English contract and the other gentleman read the original contract from Algiers . . . And after they got through reading the contract, they said they would have to contact the people in a higher echelon and let us know" (pages 126, 127 of the Godwin deposition).

"I believe before we went over there Terry or somebody else said they wanted to see the contract to be sure they were dealing with somebody who had the oil. My recollection is that Terry Clark xeroxed a copy of the contract, signed copy, with the price omitted. *Everything but the price in there* . . . and

that was given to him, if I'm not mistaken, or shown to him . . . if given or shown, I'm not certain. We talked. I can't tell you the exact sentences used, Mr. Simon, but we discussed how we got the contract and *how long we had it for.* And I believe this *option on a separate sheet was in French* . . . the original contract was in English and French. We discussed the possibility of selling and buying and the general conversation was that he would check into it and discuss it, let Mr. Clark know" (page 92 and 93 of Musslewhite deposition).

"On June 22, 1971 E. G. Ellis, Senior Marketing Advisor in the cargo trading department of Exxon International, Inc., called Ragan, who told Ellis that Pan-Islamic had concluded a contract with Sonatrach and was offering Algerian crude oil . . . on July 1, 1971 Ragan made an unscheduled visit to Exxon's offices and *discussed Pan-Islamic's alleged arrangement for the purchase of Algerian crude oil with Ellis and R. J. Doyle*" . . . (Answer to Plaintiff's Interrogatories, Rec. 1336)

". . . Mr. Ragan told Mr. Ellis that Pan-Islamic had contracted to *purchase substantial quantities of Algerian crude oil from Sonatrach,* the Algerian National Oil Company, for resale, and would be willing to sell *all or part* of this Algerian crude oil to Exxon . . ." (Affidavit of Doyle, Rec. 1992, 2172, Emphasis ours).

"The memo indicates that I was at a meeting with Mr. Ragan. That is the only recollection that I have" (page 29 of Doyle deposition).

"Question: Do you remember the quantity involved?

Answer: No, I don't.

Question: If I told you that the quantity was 80 million barrels for the first year, and an option for 40 million barrels for four succeeding years thereafter for a total of 240 million barrels of oil, would that refresh your recollection?

Answer: No.

Question: Do you recall a substantial quantity of oil?

Answer: *I gather it was for a substantial quantity of oil.*"

(page 30 of Doyle deposition).

"Question: Did the memorandum indicate that you were given or shown copies of a contract, *an option,* a letter concerning title, or anything between Sonatrach and Pan-Islamic?

Answer: Not to my recollection."

(page 36 of the Doyle deposition).

"Question: Do you recall in that contract of the latter part of 1971, what the basis of—escalation has the basis tied to some price structure, am I correct?

Answer: There are all different kinds of escalation clauses."

(page 67 of Doyle deposition).

APPENDIX 9A

RAGAN MEMO

Position Memorandum as of June 10, 1971

For: Dr. Atef Gamel El Din

ALGERIAN CRUDE OIL

General Situation:—

These factors and circumstances must be recognized and fully appreciated when attempting to evaluate conditions affecting the current efforts to sell Algerian crude oil:

1. The "major's" interests are intertwined throughout the world, and to protect themselves they must protect one another, particularly against outsiders and the governments of producing countries. Their strength and influence is great and reaches deep into governments and all economic and political matters involving oil directly or indirectly. Through this "club" the actions of the French are definitely having a temporary adverse effect on the current efforts to sell Algerian crude on the world market. However, as the date of February 24, 1971 recedes, the position of some majors and the attitude of their governments, and the governments of countries that could beneficially buy this crude (such as Italy) will relax. Algeria was resolute and strong enough to nationalize, they must retain this strength until time runs with them.

2. There has been considerable resistance to the price. This resistance may be expected to lessen soon in the light of the $0.80 per bbl. increase in the Iraq posted price to $3.20 (which probably means $0.40-48 increase in the

actual f.o.b. price), provided the other Mediterranean, African and Gulf prices are sustained and a cohesive alliance of producing countries maintained.

3. Most substantial refiners, those capable of consuming substantial quantities of crude, usually contract a year or so in advance to keep an assured supply flowing. Their production is geared to run on a particular blend or type of crude, and it requires some time for them to study and plan to introduce a different crude.

4. Under the supposed threat of embargo by OPEC members, many very large consumers built up crude stockpiles. Additionally, a mild winter in Europe resulted in a much smaller consumption thus considerably larger than normal inventories at this time of the year—between 30 and 60 days more. Consequently, large markets such as Germany will not become seriously active in seeking suplies for another 30-60 days. In the meantime, some firms there with no immediate demand, but having the luxury of time on their side, will use it to try and trade the price down.

5. In the past, was there some problem with vessels presenting and not promptly receiving cargo? This seems to be causing fear amongst some refiners to commit their operation to this crude and charter vessels, which in the event of a delivery failure would result in exhorbitant losses, to the refinery.

6. Psychologically, some large companies feel that if Algeria can nationalize foreign holdings and then easily market the crude in the world market promptly, it will encourage other producing country governments (perhaps like Lybia) to nationalize. They try to avoid this, even

though they all know nationalization in all producing countries is eventually inevitable.

7. The Algerian authorities must have realized the French would not accept nationalization gracefully, and that they are now involved in a sophisticated geopolitical economics game of intrigue, with the eyes of the world on them. If they remain calm they will win and set an example for other producing countries, but they *must not* disrupt their marketing channel.

Essentially it is merely a question of time—a few months at most—before the demand in the economically reachable markets of Western Europe, the U.S. and Canada arrive at the level where they can absorb every barrel Algeria wants to sell to them. The increasing requirements and natural instinct for self preservation in these areas will almost automatically eliminate all politically inspired barriers to buying Algerian crude.

N.B.—It is imperative, however, that Algeria not shake the confidence of prospective buyers by repudiating or failing to continuing to work with Pan-Islamic Trade Corporation, which company has offered in its name as Sellers, with Sonatrach as Suppliers, Algerian crude oil to all majors, important refineries, importers, and involved financial organizations in every approved and economically reachable world market. The French and some Germans are already saying anyone can go into Algiers and make a contract at very favorable prices; so current marketing lines must be maintained and supported or truth will be given to what the French and some Germans are saying. A strong position will soon show the Algerians are strong and serious, and real buyers will pay a good price.

Reactions to Offers in Some Markets and from Some Potential Buyers:—

JAPAN—Low sulfur crude is badly needed to help control air polution and to blend with high sulfur crude imported under long term commitment through Arabian Oil Company (Japanese owned). General MITI (Ministry of International Trade and Industry) approved import price level for low sulfur crude is $2.90 per bbl. C&F, based on Indonesian crude currently about $2.21 f.o.b. = $2.70 C&F and Sumatra crude at $2.80 C&F. Algerian crude at around $3.00 f.o.b. means about $4.00 C&F, making a direct purchase difficult. Therefore, our Japanese clients suggest exploring:

1. *Swap—*

a. Texaco has some low sulfur Indonesian production and is exploring this. Japan would take the Algerian and delivery it to Texaco for the Indonesian.

b. Japan would take substantial quantities (at least two million tons per year) of low sulfur crude with relative high yield of residual heavy fuel oil (like Zuatina, Libya 55% and even Nigerian 38% —Algerian is in the 24/27% area). They suggest seeing if Algeria could obtain such crude from the Persian Gulf (Murban and some Zakum from Abu Dhabi would be good). Instead of the PG crude going to Europe or the U.S., it would go to Japan and be replaced with Algerian. Sonatrach would only have to use their friendship with the PG low sulfur country government—Japan would handle all the commercial and financial aspects.

As the size of tankers is important to this operation, what is the largest size Algeria can accommodate—what is the draft and other vessel limitations at each Algerian crude loading port.

c. The Japanese themselves are actively exploring a swap possibility, but as they do not control any low sulfur crude or markets outside Japan, need help from Algiers.

2. *Barter*

Japan is interested in providing anything Algeria might need and accept payment in crude oil—machinery, equipment, pipe, steel, vehicles & parts, heavy construction units, engineering, services, etc.

If interesing, Algeria should make a list of their requirements available, and Japan will indicate the quantity of crude they would accept in exchange.

3. *Straight Purchase*

If if would be significant for Algeria to have Japan as a large and long term customer, Algeria might wish to consider some arrangement to provide Japan with crude more competitive with other low sulfur sources closer to Japan.

WESTERN EUROPE

FRANCE—Because of circumstances between Algeria and France no approach has been made to any French company or known affiliate. There is good reason to suspect, however, that some firms are acting as fronts for French interests to enhance the French bargaining position and damage Algeria's in their mutual negotiations.

ITALY—Publicly, most important customers are saying they have agreed, at the request of France, not to buy Algerian crude. But, privately negotiations are in progress with ENI and SARAS, which in time should be concluded successfully.

WEST GERMANY—They have 30-60 days inventory due to the mild winter, so most potential buyers are only waiting to see where the price levels off and what will happen politically, until they must actively enter the market. Responsible firms may be expected to commence serious contract discussions within that time period. Minorol Paostoff Handle (Mr. Rudolf Kroning) seem to be more active than others at this time, and are using the time until the market opens, to try and trick Algeria and their friends (Pan-Islamic) into depressing the price. About 45 days ago this group appears to have encouraged trading in the level of $3.05/3.09 f.o.b., but because Algeria permitted different prices to be indicated (such as the Gartrex Trust contract signed by Mr. Moussori) they felt the position of Algiers was unstable and that they could be pressured downward. Recently they foolishly tried to get Pan-Islamic to join with them against Algeria, and implied they would fill their requirements from Libya if Algeria did not abide by their direction on price. Naturally Pan-Islamic flatly refused to entertain their proposal. Algeria should consider requesting Libya to send a message to MRH, indicating they favored cooperation with Algeria, or would have to consider not supplying Libyan crude to Germany. If this price confusion had not come about, Pan-Islamic had an excellent possibility to sell 40 million barrels, MRH now indicates $2.75 bbl. 1 milions tons year 2 years.

Now, some rumors point to the possibility that MRH is working in behalf of, or in conjunction with the French, to reduce the price both for their own and the French benefit and to help squeeze Algeria to sacrifice their good position.

SPAIN—Indirect discussions are now progressing and a position is expected to materialize within the next few weeks.

USSR—Under serious consideration - Understand there is requirement for low sulfur crude light oil for blending. Final position expected within 30 days.

USA—Responsible levels in Government and industry privately view the Sonatrach/Pan-Islamic agreement as a favorable indication that good relations between Algeria and the U. S. can be enhanced.

Firms to whom the availability of this crude has been made known, and their initial reactions (some initially negative will re-consider), as follows:

Sun Oil Company—Interested, studying refining and crude scheduling and will revert about 10 days.

Commonwealth Oil Co.—Mr. E. Caray, Pres. of New England Oil Co. handling. Death of his father retarded negotiations. Expressed very strong interest and can use this grade. Expect final answer within two weeks.

Continental Oil Co.—Executive level has under serious consideration and will revert soon.

Texaco—Board of Directors authorized studying swap with Japan or other areas convenient to them - they have Indonesian crude production.

Mobile—Are studying from swap potential standpoint.

Humble/Esso International, Standard of New Jersey—Is at vice presidents level; are looking over their various refinery's requirements; expressed some concern over political implications - reverting.

Phillips Petroleum—They are in balance now, will have a demand in about six months. Could have been interested in about 10,000 bbls. day for England, but can obtain adequate quality crude at much cheaper price.

Standard Oil of Indiana—Have no use for it at this time.

Atlantic-Richfield (ARCO)—Have it under consideration and expect to react in about ten days.

American Oil Co. (AMOCO)—Requirements currently fully contracted, will seriously consider when opening in supply picture comes.

Amerada-Hess—After lower level study is now receiving personal consideration of Mr. Leon Hess who will answer soon.

Tenneco—Is under consideration by vice president in charge of crude supplies. Hope good reaction in two weeks.

Coastal States, Inc—In connection with joint venture for new plant out of the country, they bid $2.55 and raised it to $2.70. As soon as their partner commits to proceed with plant construction, they expect to agree to workable price level for commencement 1973, for at least 5 years. Current requirement considerations are now before Chairman Oscar Wyatt who will revert shortly.

Occidental—Could use it, but are afraid it would encourage other producing countries, particularly Libya, where they have very large investment, to nationalize.

Getty Oil Co.—No interest.

Gulf Oil Co.—Have surplus production they are trying to dispose of—no interest in Algerian.

Shell Oil Co.—Usability has been cleared at supply purchase level; is now under consideration at vice president level for political, financial, quantity determinations; hope for final reply about one week.

Coke-Oil International Co.—Under serious consideration.

Universal Tank Ships (part of the National Bulk Carriers /D. K. Ludwig group)—They have their own vessels and refineries in Central America. Initial reaction was very favorable but suddenly changed to "no interest". May have ideas of going direct—Sonatrach should be advised.

Cirillo Bros. New York—Advise they have had prices offered everywhere from $2.75 to $3.20—are studying their requirement, and probably can use, but as don't feel they know the true price, may hold off a while—invited them to verify Pan-Islamic contract with Sonatrach by cable.

Pan-Islamic has been moving to contact all potential consumers in a dignified manner and at high executive levels to avoid any idea the Algerian crude is being peddled. All firms will eventually be contacted and their reaction recorded.

There is pending before the U. S. Government certain legislation which will allow the construction of several refineries on the U. S. East Coast geared to use crude of this quality. In about six months contracts can probably be made for substantial future deliveries, but this will assure Algeria of a very good long term marketing outlet.

APPENDIX 9B

EXCERPTS RE ADMISSIBILTY OF RAGAN MEMO

"QUESTIONS OF RAGAN: All right. Now with respect to Occidental Petroleum at the bottom of the page (of Ragan Memo) there is a comment with respect to their concern that if they purchase some of this oil, it might encourage other producing countries, particularly Libya where they have large investment to nationalize. Do you have any knowledge about that comment?

ANSWER: I know that Mr. Folks was the one talking to Occidental because he knew the gentlemen here in town that had been connected with the White House, at one time, that was then with Occidental.

QUESTION: You have no recollection of who that was that Mr. Folks contacted with Occidental?

ANSWER: No, I think he knew him. I just recall that because it happened to be a local.

QUESTION: All right. But this was someone who was connected with the White House at sometime, you say?

ANSWER: I think so. Previously, not at the same time.

And then the name of "Marvin Watson" is suggested to him and the witness replied:

"Right, right, Marvin Watson" (p. 160, 161).

"QUESTION: All right. On Page Three of that same Exhibit (the Ragan Memo) the comment with respect to the U.S.A. is: 'Responsible levels in government and industry privately view the Sonatrach

—Pan Islamic Agreement as a favorable indication that good relations between Algeria and the U. S. can be enhanced.' Do you have any knowledge of who the source of that information was?

ANSWER: Yes. George Folks was talking to the State Department oil people about it and this was a comment they made. So, it was thought it would be a good comment to put in this document for Dr. El Din to Algeria." (p. 163, 164 of the Deposition.)

"QUESTION: On or about June 10, 1971, you were with Pan Islamic?

ANSWER: I was never an employee of Pan Islamic. I was working in their behalf, of course.

QUESTION: And pursuant to that work you prepared this position memorandum of June 10, 1971?

ANSWER: Yes sir.

QUESTION: Was it prepared on or about June 10, 1971?

ANSWER: Yes sir.

QUESTION: Was it prepared from information you received on or about June 10, 1971?

ANSWER: On or about, yes, or a reasonable time before then to accumulate it, I suppose.

QUESTION: Well, a reasonable time, within 15 days or 10 days?

ANSWER: Yes.

QUESTION: No longer than that?

ANSWER: No.

QUESTION: And at the time you prepared this memorandum, you prepared from notes and information you had received within that period of time?

ANSWER: Yes sir.

QUESTION: *Did you have any reason to believe that any matters that you stated in this memo were not correct at that time?*

ANSWER: *No, I have no reason to raise any questions.*

QUESTION: *This was done as part of your function for Pan Islamic?*

ANSWER: *Yes sir.*

QUESTION: Now, you said that Mr. Folks was not familiar with certain aspects of this Pan Islamic matter. Is the lack of familiarity to relating to the structure of the contract of this nature?

ANSWER: That's what he asked me to become involved in. That was the context within which he asked me to become involved.

QUESTION: But he never told you that he wasn't familiar with the activities of the oil companies?

ANSWER: *Well, again I'd say I had no reason to question whether whatever Mr. Folks said was the result of what he had done. I had no reason to question it.*

QUESTION: Well, my point is that his lack of familiarity that you've talked about related to structuring contracts?

ANSWER: This is what he said to me.

QUESTION: OK. And it did not relate to a lack of familiarity with the oil business itself?

ANSWER: Not to my knowledge, no." (p. 166-168 of Ragan Deposition.)

APPENDIX 10

AFFIDAVIT OF TYRUS G. FAIN

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME now appeared TYRUS G. FAIN, President of Gerard Corporation, a consulting firm in Washington, D.C. and after being first sworn upon his oath deposes and swears as follows, to-wit:

My name is Tyrus G. Fain. I am the president of Gerard Corporation, Washington, D.C. I was employed by Pan Islamic Trade Corporation to make a search of the newspaper files and the various hearing reports concerning possible anti-trust activities of the major oil companies. All the matters attached hereto were found by me as the result of such research and I do here and now swear and affirm that the newspaper articles are true and accurate and from the official files of said newspapers, all other reference material are the true and accurate copies from such stated references and the excerpts from the various hearings and other sources are all accurate and correct as so stated and contained therein.

/s/ TYRUS G. FAIN
Tyrus G. Fain, President
Gerard Corporation

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public, on this the 13th day of May, 1977.

/s/ NANCY L. BABCOCK
Notary Public in and for
Harris County, TEXAS

NEW YORK TIMES—Jan. 12, 1971

PARIS, Jan. 12—President Pompidou's policy of building up French prestige and power in the Mediterranean is in trouble at one of its principal points of application. Algeria.

* * *

The crisis began in July, when Algeria raised the posted price of oil from $2.08 to $2.85 without consultation as stipulated in the 1965 accords. The posted price is one used for figuring tax royalties.

French companies, mainly the Compagnie Francaise des Petroles and the Enterprises de Recherches Petrolieres, which control two-thirds of Algeria's oil production, reacted strongly to the action which cut deeply into their profit margins.

WALL STREET JOURNAL—Feb. 25, 1971

Algeria seized a 51% interest in all French oil subsidiaries in that country and nationalized all natural-gas production and all oil and gas pipelines.

The move could precipitate a major crisis between Algeria and France.

It also threw a chill over major new oil-tax and price talks involving all Mediterranean crude oils that got under way last night in Tripoli.

Algeria, Libya, Saudi Arabia and Iraq have threatened to embargo up to 5.6 million barrels a day of Mediterranean oil exports, or about 40% of Western Europe's supply, should the talks fail.

* * *

Algeria currently produces about one million barrels of oil a day, or about 7% of Western Europe's crude supply.

* * *

However, industry sources say Algeria has offered as little as $50 million for assets that industry experts value at closer to $700 million. Algeria in recent months has arrived at compensation agreements with the Royal Dutch Shell Group, Atlantic Richfield Co. and Mobil Oil Corp. The firms called the agreement "satisfactory," although terms haven't been disclosed.

GLOBE MAIL

ALGIERS (Reuter)—Immediate nationalization of all French oil companies operating in Algeria was announced by the Government last night.

President Hovari Boumedicni also announced the nationalization of all French interests in Algeria's natural gas fields as well as in the oil and gas transportation system. The measures take effect immediately.

Algeria is to take a 51 per cent per cent holding in the French companies. They would get compensation like other foreign oil companies previously nationalized.

NEW YORK TIMES—Feb. 26, 1971

PARIS, Feb. 26—The French Government formally protested today against nationalization of French petroleum interests in Algeria, and the Bank of France considered suspending monetary privileges Algeria has received as part of its special relationship with France.

Algeria blocked the accounts of French companies and began the administrative process for taking control of 51 per cent of the French companies, as ordered by President Hovari Boumedicni Wednesday.

WASHINGTON POST—APRIL 14, 1971

ALGIERS—Algeria made take it or leave it compensation offer to French oil companies.

Pres. Hovari Boumedicni offered compensation worth $100 million in oil—as of Mar. 20—new tax reference price for Algerian crude oil was $3.60 barrel.

.$75 barrel higher

$.15 higher than that agreed to by Libya

NEW YORK TIMES—APRIL 16, 1971

PARIS, April 15—France cut off further negotiations with Algeria today over their oil relations and indicated that the special ties between the two countries would now be put strictly on a business basis.

The failure of a policy that made Algeria a key point of French policy in the Mediterranean and in the underdeveloped world was implicit in the statement issued by the Foreign Ministry and in the note handed to the Algerians in Algiers by the ministry's Secretary General, Herve Alphand.

* * *

Mr. Pompidou has been criticized here for not showing the initiative and imagination that General de Gaulle might have shown in similar circumstances. For example,

it is believed that Mr. Pompidou favored giving the Algerians 51 per cent interest in the French oil companies at the end of last year but was dissuaded from such a move by oil company officials.

JOURNAL OF COMMERCE—APRIL 16, 1971

France yesterday broke off negotiations with Algeria on a wide range of energy-supply issues, putting an end to nearly two months of troubled talks.

* * *

Algeria on Feb. 24 took 51 per cent control over the two giant French oil firms operating in North Africa, and also nationalized French natural gas interests in the country.

* * *

Also this week, Algeria announced it was unilaterally increasing the posted-price of its crude oil, the basis on which taxes and royalties are calculated, to $3.60 per barrel—the highest in that part of the world.

WALL STREET JOURNAL—APRIL 27, 1971

French oil companies tightened their boycott of Algeria by threatening to sue anyone that buys Algerian crude oil or natural gas drawn from former French properties.

The French companies stopped buying Algerian oil last week on the ground it costs more than competitive crude under prices demanded by Algeria's state-owned oil compeny, Sonatrach.

* * *

French officials said major international oil companies sounded out in Paris have given assurances of their support of the French boycott.

WALL STREET JOURNAL—APRIL 29,1971

HOUSTON—The French oil companies don't have any legal basis for suing American buyers of oil and gas produced from former French properties in Algeria, in the opinion of El Paso Natural Gas Co.

This week's threat of suits by the French "obviously is a tactic to bring maximum pressure on the Algerians." Howard Boyd, chairman of El Paso Natural Gas, said.

* * *

In a letter to oil and gas companies, brokers and agencies, Compagnie Francaise asserted that Algeria's nationalization decree of Feb. 24 violated the international accord by failing to fix just compensation for the seized properties. It said it had formally contested the validity of the actions by Algeria and planned to ask international arbitration of its case. To safeguard its interests, the company said it will take "appropriate" legal action against anyone seeking to buy oil or gas from Algeria drawn from the company's seized holdings.

Other companies in the past have threatened similar legal action involving expropriation of oil and gas producing properties, including at least two U.S. companies whose properties were seized by Algeria.

WALL STREET JOURNAL—JUNE 22, 1971

PARIS—Compagnie Francaise des Petroles, the French oil company with the second largest holdings in Algeria,

is reportedly close to reaching an imdemnification settlement with the Algerian government for nationalization moves earlier this year.

* * *

The French companies have boycotted Algerian oil for several weeks, and the boycott has been supported by most of the oil industry. CFP has also warned that it would sue anyone buying Algerian oil or gas taken from its properties prior to a compensation settlement.

NEW YORK TIMES—JUNE 24, 1971

PARIS, June 23—Americans and other Westerners are working in increasing numbers in Algeria, applying management techniques to her socialist economy and helping to broaden her economic relations.

The long crisis with France over control of the country's oil resources—two French companies were partly nationalized in March—has spurred Algeria's search for more diversified ties, with little regard for ideological questions.

* * *

The Algerians, who have been hard up for cash as a result of a French boycott of their wine and oil, will be glad to get back in French markets, at least for the oil. The sudden cutoff of the markets made the Algerians fell more vulnerable than ever. The strong necessity that they now feel to look for other customers is presented as a virtue.

"The French have done us a service," said Abdullah Khodja, Secretary of State for Planning, in an interview in Algiers last week. "They are forcing us to reconvert

our economy and our markets. Algeria is no longer France's private preserve."

It is expected that the process of looking elsewhere, which began well before the deterioration of relations with France, will now be accelerated, notably in the case of the United States.

NEW YORK TIMES—JULY 1, 1971

PARIS, June 30—The French-Algerian oil crisis was resolved to a considerable extent today with the signing of a 10-year accord between Sonatrach, the Algerian national oil trust, and the Compagnie Francaise des Petroles, one of two companies whose properties in Algeria were partly nationalized in February.

The most immediate effects of the agreement, which was signed in Algiers were to lift the French embargo on Algerian oil and to halt Paris's efforts to prevent other countries from buying the contested oil.

APPENDIX 11

AFFIDAVIT OF ARNOLD I. BURNS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Before me, the undersigned, ARNOLD I. BURNS, known to me, and after first being sworn, did depose upon oath as follows:

1. My name is ARNOLD I. BURNS; I am of sound memory and over the age of twenty-one (21) and do make this affidavit of my own free will and accord.

2. I have known Benton Musslewhite since 1955 when he and I served in the United States Army together in the Judge Advocate General's Corps, both stationed at the Pentagon, Washington, D.C.

3. In the latter part of May or early in June of 1971 Benton Musslewhite called me and advised me that he represented a corporation called Pan-Islamic Trade Corporation which had entered into a contract with The National Oil Company of Algeria, Sonatrach, for the purchase and lifting of 80,000,000 barrels in the year 1971-72 and additional barrels thereafter. He told me this was a high quality oil from the Hassi Messoud and other fields in Algeria. He knew I represented various corporate clients and inquired as to whether or not I might know some parties interested in purchasing the oil from Pan-Islamic.

4. It came to my attention that one Joseph Buchanan and the company of which he was president, Petroco, Inc.,

was interested in acquiring some of Pan-Islamic's Algerian oil. I called Mr. Musslewhite in early June and negotiations commenced here in New York between Mr. Musslewhite and the principals of Pan-Islamic and myself and Mr. Buchanan of Petroco. On the 18th day of June, 1971 a contract was in fact executed, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference as if copied verbatim.

5. One of the provisions of that contract required that for it to be fully binding Mr. Buchanan be permitted to go to Algeria and satisfy himself that Pan-Islamic did indeed have the right to sell the crude oil and could deliver good and marketable title thereto (see paragraph 23 of Exhibit "A").

6. I advised Mr. Musslewhite that one of the reasons for that requirement was that Mr. Buchanan was aware of an embargo upon the Algerian oil which had been instituted by the French Government; he was fearful that without verification there would be some question as to whether or not the seller had the right to the oil and whether a genuine resale and lifting was feasible.

7. Some time in June, 1971, Mr. Buchanan and I, pursuant to prior arrangements with Mr. Musslewhite and arrangements with Sonatrach and Pan-Islamic, departed for Europe and met with Mr. Musslewhite and the negotiating agent for Pan-Islamic, Gamal Atef Eldin, in Geneva, Switzerland. Mr. Buchanan and Mr. Eldin left for Algeria the day after they arrived and Mr. Musslewhite and I followed the next day. This travel schedule was suggested by Mr. Eldin. After I arrived in Algeria Mr. Buchanan, Mr. Musslewhite and Mr. Eldin and I met with principals and officers of Sonatrach including but not limited to, Mon-

sieur Abderohim and Kotout. At that meeting Mr. Buchanan advised Monsieur Abderohim and the other officers of Sonatrach, all jointly and severally hereinafter referred to as the "Sonatrach Executives", of his contract with Pan-Islamic and the Sonatrach Executives stated that the Pan-Islamic contract with Sonatrach was in full force and effect, that Pan-Islamic could lift and market the oil and would have the right to sell it to Petroco, and that Pan-Islamic would have good and marketable title to the oil which it had contracted to buy from Sonatrach. Mr. Buchanan thereupon advised the Sonatrach Executives that he was satisfied that Pan-Islamic was entitled to sell the oil and that it could deliver good and marketable title to it.

8. During the discussions Mr. Buchanan asked the Sonatrach Executives if they were cognizant of an embargo instituted by the French Government against the Algerian oil which had been in effect for several months. The Sonatrach Executives acknowledged that they were aware of the embargo and of the problems created by it. Mr. Buchanan then stated that Sonatrach should be pleased he was purchasing some Pan-Islamic oil because of the fact that the major United States oil companies were apparently honoring the French embargo and would not deal directly in any negotiations to acquire such oil. The Sonatrach Executives acknowledged they were aware of this.

9. Mr. Buchanan also advised the Sonatrach Executives that it might be necessary for Sonatrach to reduce its price to Pan-Islamic, which was $2.98 per barrel, so that Pan-Islamic could reduce its price to Petroco because of the effects of the French embargo and its apparent

honoring by the major United States oil companies, all of which had a depressing effect upon the price of the oil. The Sonatrach Executives stated that if Petroco would present firm offers from end users, such as refineries, to purchase Pan-Islamic's Algerian oil and such price reduction were necessary to comply with the terms of such offer, Sonatrach would negotiate a reduction in price.

10. Some time after Mr. Buchanan and I returned from Algeria to New York, I became less involved in the situation and learned that the oil under the Pan-Islamic-Petroco contract was never lifted.

/s/ ARNOLD I. BURNS
Arnold I. Burns

Sworn to before me this
20th day of April, 1977.

/s/ TANYA K. TISA

APPENDIX 12

EXCERPTS RE ROUTHIER AND CONNOR STATEMENT IMPLYING BOYCOTT

"I'm not quite sure of his name—'Ruthia'; I think it is pronounced 'Ruthia.'

Q. Can you spell that, to the best of your recollection?

A. No. I remember it is a French name sound like 'Ruthia.' I'm not very good on French names. I remember the gentleman was with Texaco, who visit him in his office in New York. It was during the summer of 1971, and we had about a half-hour meeting and talked over us having this contract and the basic points. And what else that this gentleman made, in my opinion, was sufficient enough to think about the idea of, or felt like we could have sold this oil. And as I recollect his exact words that 'If any others did buy a drop of oil from you, come over and we will buy the rest.'

Q. Was this Mr. R. N. Routhier, R-o-u-t-h-i-e-r?

A. The pronunciation is correct, yes, sir.

Q. You recall a conversation such as that which you were discussing in which Mr. Routhier allegedly made those statements?

A. We were talking—we hoped that we can sell some crude oil to Texaco. And we offered them —we talked in general terms, and a very educational meeting, as I remember, because I learned a lot about the oil business.

Q. Was Mr. Routhier expressing any concern about the French nationalization of the Algerian oil?

A. French nationalization? Involvement of the French government was discussed in this conversation, yes, sir.

Q. Do you recall whether Mr. Routhier was talking in terms of the title risk to purchase that oil, that if the company bought it, they might be involved in some dispute as to who actually owned the oil that they purchased? Did he talk about that?

A. He did talk about the difficulties that oil companies had on account of French government's actions, yes.

Q. Did he specify what kind of difficulties?

A. No.

Q. Problems in perhaps buying the crude and perhaps ending up with a lawsuit as to who owned the oil they bought? Did he express that kind of concern as a difficulty?

A. No. We talked in generalities. And I remember him mentioning the French government's—having difficulty or the possibility of having difficulty with the French government, yes. I don't remember him going into, you know, into any explanation of why and all that. He could have said it. I can't say yes or no to that. But we did talk about the French government's actions in Algeria and also that the oil companies having difficulty with the French government . . . (pp. 80-83, Icsel Deposition).

Q. Did Mr. Routhier say anything about having a conversation with another oil company about reluctance to buy Algerian crude?

A. Yes. No answer . . . (p. 85, Icsel Deposition).

Q. How about as to other defendants?

A. Well, my only answer to that might be the personal impression or statement I made earlier that during the trip to New York we had a meeting with a gentleman representing the Texaco—and I still don't call his name—and I think it was—his name was established in the previous deposition—and the statement that this gentleman made to me that if anybody else bought any oil, then we can come back to him and he will buy the rest . . . (p. 274, Icsel Deposition).

Q. Did he indicate Texaco might even buy some if the price was lower?

A. Like I say earlier, he indicated if anybody else bought, we could come back to him with the rest.

Q. His indication was if the price was down to the level other people were paying, you could come back and he would buy some?

A. No, sir. The statement—I repeat—if others bought it, then we can come back with the rest. He did tell me or tell us if we wanted to lower the price and sell it to somebody else at a lower price, then we can come back to them with the rest; no.

Q. Are you telling us that he said as long as somebody else bought some, he would buy all of the rest from you at the price which he just told you was too high?

A. No. He made no mention of price at that time . . . (p. 332, 333, Icsel Deposition).

Q. As I understand from what you said a couple of weeks ago, there was a sentence of his or statement of this gentleman that stuck in your mind.

A. Yes, sir.
Q. Could you give it to me again?
A. I'm not going to quote him; I'm just telling you as I remember. I'd like to make it clear.
Q. All right.
A. If we were able to sell any of this crude oil to any other company, that we can come back to him with the rest, or he will buy whatever is left.
Q. Now, when he said that, you say that surprised you or upset you or something. Did you not use words like that?
A. Yes, I did. That particular statement was one of the things that stuck in my mind because I couldn't figure out why Texaco has to wait for somebody else to buy any oil before they buy any oil. Texaco is a company, an independent company, and if I was a stockholder in Texaco, I wouldn't like them to go buy oil if Exxon buys any oil or Mobil buys any oil. So that statement didn't make any sense to me.
Q. Did you ask him for any explanation of the statement that didn't make any sense to you?
A. No, sir, I did not. At the time my impression, my feelings, that Texaco wasn't going to buy any oil unless somebody else bought the oil.
Q. But your feeling came just from this one statement?
A. Yes.
Q. And that is the only thing you heard from him that gave you that indication?
A. That was my interpretation of the statement he made, yes, sir. . . . (pp. 341, 343, Icsel Deposition)

Q. He didn't make any other statement—
A. No, sir.
Q. —along those lines?
A. No, sir.
Q. Or say or do something else that gave you that impression?
A. No, sir. I had a very strong feeling as far as what he was talking about.
Q. But you didn't ask him to explain his statement further?
A. To me, I didn't think it needed any explanation, sir.
Q. In other words, in your mind it was clear if you sold any oil to anybody else, Texaco would buy all of the rest at—what? the price you'd been talking about before?
A. In my mind, I was positive if we sold any oil to any other oil company, we should go back to this gentleman's office and sell all the rest. I don't mean any price or anything else; I don't think that was a matter of question.
If he said that—"If you lower your price, if you come back to me, if you sold to anybody else at a lower price, you can come back and sell your oil to me at a certain price"; he did not say that. What I am saying is what he said and the way he said it. And my personal interpretation of him, in my mind, if we sold any oil to anybody else, we can go to this gentleman; I was confident that he will buy the rest. . . . (pp. 343-345, Icsel Deposition).
Q. Did he make it before he knew what price you were trying to sell the oil for; do you remember that?

A. This was before we mentioned to him any price. He could have known our price if Mr. Ragan contacted him or somebody else contacted him. He could have known the price, yes. But this was prior to us discussing any particular price. . . . (pp. 345-346, Icsel Deposition).

Q. Do you recall any other advice he gave you except what you have told us so far?

A. I don't remember anything else. He was very firm, very helpful. You talk to lots of people and some people say a lot of things and some people make sense and some don't. And everything he said was—that it was helping me in my business today. When I read in the paper or listen to people or talk to people, I can't talk more intelligently because of this one particular conversation.

For the record, I feel strongly about this conversation, sir. I did learn a lot, and even though I was very upset with him. . . .(Icsel Deposition, pp. 346, 347).

"Q. Anything else said in that meeting?

A. We went into the overall purchase of the crude, Algerian crude oil. I don't recall, but I was present when Mr. Icsel told you he said he'd like to know about it if anybody bought any Algerian crude oil.

Q. Who is 'he'?

A. The man we were talking to.

Q. Do you know his name?

A. Connor.

Q. Connor?

A. I don't recall it being said exactly that way. I suppose my recollections are vaguer than his. But something to the effect that it would be difficult for Texaco to buy Algerian crude direct.

Q. Anything else?

A. He didn't think they would be interested in buying any Algerian crude oil direct. . . . (Musslewhite Deposition, pp. 327, 328).

Q. The same answers to those same questions would apply, then, if I were to ask you as to all of the other defendants; is that correct?

A. Except for that one intimation by the man in Texaco that we talked to that it would be difficult for him to buy the Algerian crude directly or words to that effect. . . . (p. 539, Musslewhite Deposition).

"I have a very vague recollection of the meeting (with Icsel) (pp. 53-55, Routhier Depo.) and see entire Deposition; Routhier never said conversation with Icsel was casual.

APPENDIX 13

EXCERPTS RE CONTACTS BY PLAINTIFF OTHER THAN THOSE IN RAGAN MEMO AND THOSE ADMITTED

"Were there ever any other contracts with oil companies you were party to?" Answer, ". . . I happened to know the president of another oil company (who he identified as George Mason, President of Tenneco). I mentioned it (the Algerian oil) to him . . .". Mason advised that Tenneco was not interested. (pp. 47, 48 Romano Deposition).

"I and Clark (Edward Clark of the Bledsoe-Clark group or Terry Clark), contacted Amerada-Hess at its terminal at Galena Park (Godwin Deposition 107, 154, 166, 174-186) in the month of May, (1971)" (p. 176, Godwin Depo.). "We were with the Amerada-Hess man between thirty minutes to an hour" (p. 184, Godwin Depo.). "I'm sure price was mentioned, but I don't remember it because most everybody we contacted, we told them the price before we came out" (p. 185, Godwin Depo). "The best I can remember, it (the Pan-Islamic contract) was shown to him" (p. 188, Godwin Depo.). "We gave the Amerada-Hess man a copy of the contract to look at" (pp. 185, 186, Godwin Depo.).

"QUESTION: Is Getty Oil on there?

ANSWER: I will say I have knowledge there. There is a friend of mine who worked for Getty Oil at that time, John Perkins, that I had asked him in '71 and asked him to check with their people to see if they had any interest in the oil. And my recollection is he did.

QUESTION: In 1971 was he employed by Getty Oil Company?

ANSWER: Yes. In-house lawyer.

QUESTION: Doing labor work?

ANSWER: Labor law primarily. And he said he called somebody.

QUESTION: Let me stop you right there. You called Mr. Perkins to determine whether Getty Oil might have any interest in any crude oil?

ANSWER: I don't think I called him for that. We are from the same home town and—

QUESTION: You made a passing reference to this crude oil.

ANSWER: Yes. He said, "Let me see if I can get you a contract."

QUESTION: Did you discuss price?

ANSWER: I told him, my recollection is, as much as I could about it: The kind of oil, giving the qualifications of the oil, the amount we had, the terms of our contract.

QUESTION: Do you recall what price you offered him?

ANSWER: It's hard to say specifically. I would imagine I told him if I could get it set up at $3.09—

QUESTION: I didn't ask you to imagine. Do you recall or not recall?

ANSWER: I know by the time I talked to him it had to be a price in excess of $3.05 a barrel.

QUESTION: Did you ask Mr. Perkins to take any action to see whether Getty might be interested?

ANSWER: Yes.

QUESTION: Did he do so?

ANSWER: Yes, he did.

QUESTION: Do you know what he did?

ANSWER: He told me he called.

QUESTION: Who did he call?

ANSWER: Somebody in purchasing.

QUESTION: You don't know who that is?

ANSWER: I think he probably told me at the time.

QUESTION: You don't know who?

ANSWER: No. My best recollection is he didn't say. And he called somebody and they looked into it and later told him they had no interest. (Musslewhite Deposition, pp. 534, 535 and 536.)

APPENDIX 14

EXCERPTS FROM PLAINTIFF'S INTERROGATORIES TO DEFENDANTS AND ANSWERS THERETO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. 74-H-463

PAN-ISLAMIC TRADE CORPORATION,
Plaintiff,

v.

EXXON CORPORATION, et al.,
Defendants.

ANSWERS AND OBJECTIONS OF DEFENDANT EXXON CORPORATION TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

Defendant Exxon Corporation ("Exxon") herewith answers and objects to Plaintiff's First Set of Interrogatories.

A. *General Objections*

The following general objections are made to each of plaintiff's interrogatories:

1. *Objection to Time Period*

Exxon objects to the time period January 1, 1948 to June 10, 1975 on the grounds that it is overly broad, unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

* *

Accordingly, unless otherwise indicated by the Answer, Exxon has limited its answers to the time period May 14 - October 1, 1971.

2. *Objection to Definition of "You" or "Your"*

Exxon objects to the definition of "you" or "your" to the extent it refers "to any corporation or other business entity in which the answering defendant directly or indirectly holds a 10% or more interest or which owns a 10% or more interest in the answering defendant" on the grounds that it is overly broad, unduly burdensome and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

* * *

6. *Objection to Non-Algerian Crude Oil*

In addition to the foregoing objections, Exxon objects to those interrogatories which seek information as to crude oil other than Algerian crude oil because the existing Complaint herein is limited to allegations involving Algerian crude oil.

* * *

15. Do you have in your possession debriefing memorandums of testimony made in grand jury proceedings?

Objection: Exxon objects to Interrogatory No. 15 on the grounds that it invades the attorney-client privilege and attorney work product doctrine for which the requisite showing under Rule 26(b)(3) has not been made. Exxon further objects on the grounds that it invades Grand Jury secrecy and that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

* * *

17. Do you have in your possession any documents sent to you relating to antitrust matters that came into your possession from a third party who is not an attorney of yours?

Objection: Exxon objects to Interrogatory No. 17 on the grounds that it is ambiguous, overly broad and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

18. Do you have in your possession any documents relating to antitrust matters sent to you by an attorney of yours that contains matters given to him by parties other than an attorney of yours?

Objection: See objection to Interrogatory No. 15.

19. If your answer to either of the two preceding interrogatories (17 and 18, or both), is yes, please state:

a. The parties who have possession of such documents;

b. The dates of such documents;

c. The attorneys or other persons who sent the documents;

d. The general subject matter and nature of the documents.

Objection: See objections to Interrogatory Nos. 17 and 18.

20. If any of the documents identified in interrogatories 17 and/or 18 are related specifically to purchase or sale of Libyan or Algerian crude oil, please state:

a. The content of the document;

b. Who sent the document to you;

c. The person who received the document.

Objection: See objections to Interrogatory Nos. 17 and 18.

21. Were any of the matters contained in any of the documents referred to in any of the preceding four interrogatories (17, 18, 19, and 20) discussed between you and any of the other Defendants herein?

Objection: See objections to Interrogatory Nos. 17, 18, 19 and 20.

22. If your answer to this interrogatory is yes, please state:

a. The parties to the discussion;

b. When the discussion was held;

c. The subject matter discussed.

Objection: See objection to Interrogatory No. 21.

23. Do you or did you own or acquire property in Algeria of a total value in excess of One Hundred Thousand Dollars ($100,000.00)? "Total Value" as used herein is cost, market value or sale price, whichever is greatest.

Objection: Exxon objects to Interrogatory No. 23 on the grounds that it is ambiguous, overly broad and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

* * *

30. State whether you communicated orally or in writing during the years 1948 to present with any officer, agent, employee, or person acting or purporting to act on behalf of any other Defendant named in the complaint or any other corporation engaged in the production or sale of crude oil, or with an intermediary, through statements or writings referring or relating in any way to inquiries from, or efforts made to offer or sell crude oil to third persons referring in any way to prices, terms and conditions of sale of crude oil to third persons or such corporations pricing, selling, or buying policies applicable to crude oil with respect to third persons.

Objection: Exxon objects to Interrogatory No. 30 insofar as it pertains to communications concerning the purchase or sale of crude oil other than by plaintiff, on the grounds that information concerning such communications is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and that compliance would be unreasonably burdensome.

Answer: Prior to the filing of the Complaint in this action, Exxon had no communications with any other defendant, or with any other corporation engaged in the production or sale of crude oil except plaintiff, concerning the purchase or sale of crude oil by plaintiff.

* * *

32. Identify each document passing between you and any officer, agent, employee, or other person acting or purporting to act on behalf of any other Defendant named in the complaint or any other corporation engaged in the production of crude oil during the period from 1948 to present relating in any way to inquiries from, or efforts made to offer or sell crude oil, or referring or relating in any way to prices, terms and conditions of sale of crude oil or to your pricing or selling policies applicable to crude oil with respect to such third persons.

Answer: See objection and answer to Interrogatory No. 30.

33. Identify each person employed by or who acted for you, who testified before any agent, agency or committee of the Executive or Legislative branch of the United States or of any state or who submitted any written document or statement, data, or report to such agent, agency, or committee in connection with any investigation of alleged illegal pricing, boycotting, or alleged unlawful marketing agreements affecting crude oil.

Objection: Exxon objects to Interrogatory No. 33 on the grounds that it is vague, overly broad, unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. See also objections to Interrogatory No. 15.

34. As to each person identified in the answer to the preceding interrogatory state:

a. The date and place and to whom such information or testimony was given;

b. Any writing relating to such testimony and the location and custodian of the writing.

Objection: See objection to Interrogatory No. 33.

* * *

38. Identify since 1948 each report, statistical bulletin or memorandum which you have submitted to or received from any trade association, policy group, or any organization, formal or informal relating to the purchase or sale of crude oil with respect to each of the following:

a. Production;

b. Prices;

c. Sales;

d. Costs;

e. Profit;

f. Drilling;

g. Shipping;

h. Refining.

Objection: Exxon objects to Interrogatory No. 38 on the grounds that it is overly broad, unduly burdensome and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Answer: To the extent such interrogatory is limited to the crude oil the subject of the contract between Pan-Islamic and Sonatrach, no such document has been submitted or received. Exxon is aware, however, that during the period May 14 - October 1, 1971, "Platt's Oilgram" published a posted price for Algerian crude oil.

* * *

44. Since 1948 has your President past or present communicated or discussed pricing of crude oil with any persons other than you.

Objection: Exxon objects to Interrogatory No. 44 to the extent that it applies to the communications or discussions of the pricing of crude oil other than crude oil offered for sale by plainitff, on the grounds that it is overly broad, unduly burdensome and is neither relevant not reasonably calulated to lead to the discovery of admissible evidence.

Answer: Exxon knows of no such communications or discussions with respect to the pricing of crude oil offered for sale by plaintiff.

45. Since 1948 has any employee or agent of you communicated or discussed pricing of crude oil with a person who at the time of the discussion was a President of one of the other Defendant companies.

Answer: See objection and answer to Interrogatory No. 44.

46. If your answer to either of the preceding interrogatories is yes, please state:

a. The date or dates;

b. Persons present;

c. The locations of the parties to the conversation;

d. Whether oral, in person, or telephonic, or in writing;

e. Whether there is a written memorandum relating to the discussion;

f. Whether any communication was put in writing;

g. The location and custodian of any writing or memorandum relating to the matters;

h. A brief description of the nature of the conversation or writing.

Answer: Not applicable.

47. Did any of the communications stated in the preceding interrogatory relate to the purchase or sale of Algerian crude oil during the years 1970 and 1971?

Answer: Not applicable.

48. If your answer to the preceding interrogatory is yes, please state:

a. Whether or not a boycott was discussed;

b. Whether or not Sonatrach was discussed;

c. Whether or not Pan-Islamic Trade Corporation was discussed;

d. What other matters were discussed;

e. The location and custodian of any memorandum or other writing relating to the matter.

Answer: Not applicable.

* * *

67. Identify each document relating to your pricing policy or the making of prices for crude oil for the period of 1948 through the present, as well as such documents embodying your recommendations made prior to final approval by the person or persons having authority to give such final approval.

68. Identify for the years 1948 to present by number, date, and effective period each price list or catalog in-

cluding additions, insertions, supplements, and changes therein, issued by your company in connection with the selling prices and buying prices.

69. If at any time you did not have in effect or use any price lists, sheets or books in connection with pricing of crude oil:

a. State the period of time during which no price lists or books were in effect or used;

b. State how prices including price quotations were determined during such period or periods;

70. State whether from 1948 to present you ever issued, quoted or used any discount, multiplier, or basic point pricing or other pricing formula in conjunction with a price list, sheet or book, in order to determine the price of crude oil.

71. State the dates of issue, or if not available, other identifying number of symbol of any document promulgating or stating your pricing.

72. If any discount, multiplier, basic-point pricing or other pricing formula is applied only under certain conditions, but not limited to, the customer, class of customer, quantity purchased or sold or geopraphical location of the purchaser or seller not disclosed or stated in such document, state each condition and the discount multiplier or pricing formula to which it applied.

73. State the period during which each such discount, multiplier, basic-point pricing or other pricing formula was issued, quoted, or used.

74. Identify each report, statistical bulletin or memorandum submitted by you during the period since 1948

to the Department of Commerce and to the United States Department of Labor with respect to crude oil.

Objection: Exxon objects to Interrogatory Nos. 67 through 74 on the grounds that they are vague, overly broad, unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

* * *

85. During the years 1970 and/or 1971, did you have any agreements with the French relating to the purchase or sale of crude oil?

Objection and Answer: Exxon objects to this interrogatory on the basis of General Objections stated hereinabove, "Objection to Time Period" and "Objection to Non-Algerian Crude Oil"; however, Exxon states that neither Exxon Corporation nor its affiliates had any agreements with the French relating to the purchase or sale of Algerian crude oil during the time period May 14 - October 1, 1971.

86. If your answer to the preceding interrogatory is yes, please state:

a. The dates of the agreements;

b. The nature of the agreements;

c. The parties to the agreements;

d. Whether the agreements were oral or in writing;

e. The persons making the agreements;

f. If in writing, the persons in possession of such agreements and location of the agreements.

Answer: Not applicable.

87. Do you keep records of the volume of business your company makes in the following categories:

a. The production of crude oil;

b. The transportation of crude oil;

c. Refining of crude oil;

d. Transportation of refined petroleum products;

e. Sale of refined petroleum products.

88. If your answer to the preceding interrogatory is yes, please state:

a. The gross volume of sales in each of the categories stated in the preceding interrogatory and your profits both before and after taxes; in each of said categories.

b. The gross volume of your sales in each of the categories stated in the preceding interrogatory that are to you.

* * *

91. Did you attend subsequent to January 1, 1964, any meeting with representatives of any other Defendant concerning in whole or in part production, royalties, tax rates, government equity participation, freight rates and differentials, of North African countries' crude oil or concerning negotiations with, demand by, or communications with North African countries relating to such matters?

92. If your answer to the preceding interrogatory is yes, please state:

a. The dates of the meetings;

b. The place of the meetings;

c. Who was present.

93. Are you familiar with the term "posted price" as used in the oil industry?

94. If your answer to the preceding interrogatory is yes, please state:

a. The definition as you know it of the term "posted price";

b. Whether as to crude oil produced in North African countries you have purchased oil or sold oil at less than the "posted price" at date of sale in the last twenty years.

95. If your answer to the preceding interrogatory is yes, please state:

a. The greatest amount per barrel less than the posted price that you received for oil sold giving the price per barrel sold and the posted price;

b. The greatest amount per barrel less than the posted price that you paid for crude oil giving the price per barrel purchased and the posted price;

c. The number of sales made by you at less than the posted price;

d. The number of purchases made by you at less than the posted price in the last twenty years;

e. The percentage of sales made at less than the posted price in number of sales;

f. The percentage of sales made at less than the posted price in volume of sales;

g. The percentage of purchases made at less than the posted price.

96. Have you ever sought advice from the Department of Justice of the United States that it would not or had no present intention of instituting any proceeding under the antitrust laws with respect to the making of performance of any agreement to which you are a party?

97. If the answer to the preceding interrogatory is yes, please state:

a. The party who sought such advice;

b. The date the advice was sought;

c. The subject matter related to in the advice;

d. Whether or not advice was given by the Justice Department of the United States;

e. What was the advice;

f. If the advice was in writing, whether or not you have a copy of such advice;

g. If the advice was in writing and you do not have a copy of such advice, pleace state who has a copy of such advice.

98. Did you at any time since 1920 file a pleading in any court in the United States or England contending that an agreement to which you were a party was in restraint of trade or contrary to public policy and void or voidable and/or unenforceable in law? If your answer to the preceding interrogatory is yes, please state:

a. The commonly known name of the agreement, if any;

b. The parties to the agreement;

c. The date you became a party;

d. The court in which you made such contention;

e. The date the contention was first made in court;

f. The style of the case, including identification of the court and location of the court in which suit was filed;

g. Number and style of case;

h. Present location of your files on the case and custodian of those files.

99. List all law suits filed since 1904 in which you are named as a Defendant and in which Plaintiff claims you violated the antitrust laws of the United States and/or acted in restraint of trade and/or violated the antitrust laws of any state, giving as to each case the date suit was filed, the names of plaintiffs, the names of the defendants and a brief description of the plaintiffs' allegations. This interrogatory includes suit in which a government is a party.

Objection: Exxon objects to Interrogatory Nos. 91 through 99 on the grounds that they are overly broad, unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

* * *

ANSWERS AND OBJECTIONS OF DEFENDANT TEXACO INC. TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

Defendant Texaco Inc. ("Texaco") herewith responds to Plaintiff's First Set of Interrogatories as follows:

* * *

Any information relating to the time period prior to May 14, 1971 or subsequent to September, 1971, after which Pan-Islamic had abandoned its efforts to sell Algerian crude oil, is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Thus each answer to each interrogatory is limited in time to May 14, 1971 to September, 1971, unless otherwise indicated.

OBJECTION TO ALL INTERROGATORIES

Presently pending in this case are plaintiff's Motion for Leave to File an Amended Complaint and defendants' Motion for Partial Summary Judgment or Alternative Relief. Until these Motions are decided, it is uncertain which issues, if any, are properly available for litigation by plaintiff and, indeed, whether the case, if it proceeds at all, will proceed under plaintiff's original complaint, proposed amended complaint, or some third form of complaint required by the disposition of the pending Motions.

* * *

40. Are you familiar with an oil group or association called the London Policy Group?

41. Are you familiar with an oil group or association called the New York Policy Group or New York Group?

42. If your answer to the preceding interrogatory (either number 40 or number 41 or both) is yes, please state as to each that you answered affirmatively:

a. Whether or not the group has members;

b. Whether or not you are a member of the group;

c. Whether or not you have participated in either or both of their meetings;

d. The location of the meetings that you did participate in;

e. The dates of those meetings;

f. Give the names of the persons present at those meetings;

g. Do you have any minutes of such meetings?

h. Who was the person who would keep such minutes?

i. Were there discussions of Algerian oil?

j. Were there an discussions about boycotting Algerian oil or refusing to buy oil from Algeria or produced in Algeria?

k. Were there any discussions relating to refusing to buy oil from any other places or sources?

43. If your answer to the preceding interrogatories (number 42, subparagraphs (j) and (k) is yes,

i. Give the persons present at the discussion;

ii. The date of the discussion;

iii. The location of the oil discussed;

iv. The general nature of the discussion.

Response to 40 - 43: Texaco knows of no meeting at which the boycotting of the crude oil sold by Sonatrach to Pan-Islamic was discussed. Neither Texaco nor anyone on its behalf participated in such a boycott. Further, Texaco knows of no group, however denominated, which ever expressed any interest whatsoever in interfering in any manner whatsoever with the plaintiff's contract with Sonatrach or of causing the plaintiff any competitive harm. To the extent that these Interrogatories seek in-

formation with respect to groups and meetings unrelated to plaintiff and plaintiff's claims, Texaco objects to them on the grounds that they are plainly pointless, would impose a harrassing burden upon defendant, and are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

* * *

ANSWERS AND OBJECTIONS OF DEFENDANT SUN OIL COMPANY (DELAWARE) TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES

Sun Oil Company (Delaware), a defendant herein (hereinafter referred to as "Sun"), hereby submits, pursuant to Rule 33, Fed. R. Civ. P., its answers and objections to Plaintiff Pan Islamic Trade Corporation's First Set of Interrogatories, dated June 10, 1975.

DEFINITIONS

Defendant Sun makes the following specific objections to the Definitions contained in Plaintiff Pan-Islamic Trade Corporation's First Set of Interrogatories.

* * *

Thus, to the extent that the interrogatories would seek information for any period other than the year 1971, Sun objects on the grounds that the information sought is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence;

* * * *

ANSWERS AND OBJECTIONS OF DEFENDANT SHELL OIL COMPANY TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

Defendant Shell Oil Company ("Shell") herewith answers and objects to Plaintiff's First Set of Interrogatories.

* * *

Thus, any information relating to the time period prior to May 14, 1971, when Pan-Islamic did not have a contract with Sonatrach, and subsequent to September, 1971, when Pan-Islamic was making no effort to sell the Algerian crude oil because such contract had been canceled, is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

* * *

RESPONSE OF DEFENDANT TENNECO OIL COMPANY TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 33(a), Defendant Tenneco Oil Company (Tenneco) hereby responds to Plaintiff Pan-Islamic Trade Corporation's (Plaintiff or Pan-Islamic) First Set of Interrogatories as follows:

* * *

On December 2, 1974, Pan-Islamic filed a Motion for Leave to Amend its Original Complaint. The Defendants,

including Tenneco, have filed a response in opposition to that motion which is still pending before the Court. The interrogatories that Plaintiff has propounded, with few exceptions, ignore the limitations of the case as established by the only complaint on file and by discovery from its own records and principals. For these reasons, Tenneco respectfully objects, among other things, to the dates and geographic scope of Plaintiff's interrogatories.

* * *

4. For the reasons stated above in the Preliminary Statement, Tenneco objects to the geographic scope of plaintiff's interrogatories as set forth in paragraph J thereof, insofar as any interrogatory attempts to require Tenneco to supply information or identify documents unrelated to Algeria or Algerian crude oil.

* * *

6. For the reasons stated above in the Preliminary Statement, Tenneco objects to the temporal scope of Plaintiff's interrogatories as set forth in paragraph O thereof, insofar as any interrogatory attempts to require Tenneco to supply information or identify documents dated prior to January 1, 1971 and subsequent to June 17, 1971.

* * *

RESPONSE OF DEFENDANT ATLANTIC-RICHFIELD COMPANY TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 33(a), Defendant Atlantic-

Richfield Company (Atlantic-Richfield) hereby responds to Plaintiff Pan-Islamic Trade Corporation's (Plaintiff or Pan-Islamic) First Set of Interrogatories as follows:

* * *

On December 2, 1974, Pan-Islamic filed a Motion for Leave to Amend its Original Complaint. The Defendants, including Atlantic-Richfield, have filed a response in opposition to that motion which is still pending before the Court. The interrogatories that Plaintiff has propounded, with few exceptions, ignore the limitations of the case as established by the only complaint on file and by discovery from its own records and principals. For these reasons, Atlantic-Richfield respectfully objects, among other things, to the dates and geographic scope of Plaintiff's interrogatories.

* * *

4. For the reasons stated above in the Preliimnary Statement, Atlantic-Richfield objects to the geographic scope of Plaintiff's interrogatories as set forth in paragraph J thereof, insofar as any interrogatory attempts to require Atlantic-Richfield to supply information or identify documents unrelated to Algeria or Algerian crude oil.

* * *

6. For the reasons stated above in the Preliminary Statement, Atlantic-Richfield objects to the date scope of Plaintiff's interrogatories as set forth in paragraph O thereof, insofar as any interrogatory attempts to require Atlantic-Richfield to supply information or identify documents dated prior to January 1, 1971 and subsequent to June 17, 1971.

* * *

DEFENDANT MOBIL OIL CORPORATION'S RESPONSE TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES

Defendant Mobil Oil Corporation ("Mobil") hereby responds to Plaintiff Pan-Islamic Trade Corporation's ("Plaintiff" or "Pan-Islamic") First Set of Interrogatories to Defendants with the following general objections, specific objections and answers subject to such general and specific objections.

* * *

Plaintiff's Original Complaint is based solely upon its purported contract with Sonatrach and its efforts to sell Algerian crude oil. There is no allegation that it dealt or attempted to deal in crude oil produced in geographic areas other than Algeria. Accordingly, to the extent that Plaintiff's interrogatories attempt to require Mobil to supply information or identify documents relating to activities beyond the geographic scope of Algeria and Algerian crude oil, they seek information that is not relevant to the subject matter of the claims advanced in Plaintiff's Original Complaint and are not reasonably calculated to lead to the discovery of admissible evidence.

* * *

Mobil believes that the only time period relevant to the subject matter of Plaintiff's Original Complaint is that during which Plaintiff was in existence and attempted to deal in Algerian crude oil.

* * *

7. Mobil objects to the scope of the subject matter or activities inquired of by Plaintiff's interrogatories in-

sofar as any interrogatory attempts to require Mobil to supply information or identify documents unrelated to the purchase and sale of crude oil.

* * *

B. *Specific Objections*

1. Mobil hereby objects and respectfully declines to answer the following interrogatories on the grounds that (a) they are not relevant to the subject matter of any claim advanced by Plaintiff's Original Complaint and are not reasonably calculated to lead to the discovery of admissible evidence, and/or (b) they are overly broad, unduly burdensome and oppressive. Interrogatories objected to on these grounds are numbered 10, 11, 15 through 19, 28 through 36, 38, 39, 44 through 46, 67 through 74, 87, 88 and 96 through 98.

2. Mobil hereby objects to the following interrogatories, in part, in that they inquire of information and/or documents (a) beyond the geographic scope of Algeria, (b) beyond the scope of activities related to buying and selling crude oil, and/or (c) covering an unreasonably broad period of time. Subject to such objections, without waiver of the position advanced in Defendants' Motion for Partial Summary Judgment, and without conceding the relevancy of any time period beyond that of Plaintiff's active existence, the following interrogatories will be answered, where applicable, only insofar as they relate to Algeria or the buying and selling of Algerian crude oil for the time period 1968 through 1974. The interrogatories to which this objection is applicable are as follows: 13, 20 through 22, 26, 27, 42, 43, 51, 52, 61 through 64, 81, 82, 91, 92, 94 and 95.

* * *

RESPONSES OF DEFENDANT AMERADA HESS CORPORATION TO FIRST SET OF INTERROGATORIES TO DEFENDANTS

NOW COMES defendant Amerada Hess Corporation and respectfully responds to Plaintiff's First Set of Interrogatories to Defendants as follows:

* * *

Objection: The time period specified is too extensive and is unduly burdensome and oppressive. It includes periods of time which are not relevant, and would not be reasonably calculated to lead to discovery of admissible evidence. Plaintiff did not have any contract relative to Algerian oil, according to its own pleadings, prior to May, 1971. Plaintiff's attempts to sell such oil had ended by September, 1971, and its contract with Sonatrach had been cancelled.

* * *

ANSWERS AND OBJECTIONS OF DEFENDANTS AMOCO OIL COMPANY AND STANDARD OIL COMPANY (INDIANA) TO PLAINTIFF PAN ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

Defendant Amoco Oil Company ("Amoco") and Standard Oil Company (Indiana) ("Standard") hereby answer and object, in one document for the convenience of the Court to Plaintiff's first set of Interrogatories.

* * *

The entire period of Plaintiff's commercial operation during which it alleges injury because of the allegedly illegal conduct of defendants spans the few months from May to September, 1971. Moreover, the sole claim in the Complaint relates to alleged interference in Plaintiff's attempts to resell crude oil covered by one contract between Plaintiff and the Algerian National Oil Company, Sonatrach. The permissible area of discovery proper to the litigation of that single, slim claim should be limited to the period of Plaintiff's activities and these defendants have responded on that basis. Discovery as to prior and subsequent periods is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

* * *

PHILLIPS PETROLEUM COMPANY'S ANSWERS AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Phillips Petroleum Company (hereinafter called "Phillips"), by and through the undersigned hereby submits its answers and objections to the interrogatories propounded by the Plaintiff in the above-captioned case, as follows:

OBJECTION:

Phillips objects to the definition designated 0, and to each interrogatory to which it applies, to the extent that it requires Phillips to provide information on matters occurring prior to January 1, 1971.

* * *

Nevertheless, Phillips is willing to provide information in response to these interrogatories for the period from January 1, 1971 to the date of these interrogatories, but objects to providing information regarding matters occurring prior to January 1, 1971 on the ground that such information cannot pertain to the alleged unlawful conduct complained of herein and is, therefore, irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence herein.

* * *

The complaint cannot be reasonably interpreted to charge that the alleged injury to plaintiff resulted from or related to any business of activity of plaintiff other than the importing of Algerian crude oil into the United States for resale. Consequently, to the extent that these interrogatories seek to obtain information from Phillips on matters unrelated to such business activity, Phillips objects to each and every such interrogatory on the ground that the information sought thereby is irrelevant and immaterial and not reasonably calculated to lead to the discovery of admissible evidence herein.

* * *

RESPONSE OF DEFENDANT GETTY OIL COMPANY TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, Fed. R Civ. P. 33(a), Defendant Getty Oil Company (Getty) hereby responds to Plaintiff Pan-Islamic Trade Corporation's (Plaintiff or Pan-Islamic) First Set of Interrogatories as follows:

* * *

On December 2, 1974, Pan-Islamic filed a Motion for Leave to Amend its Original Complaint. The Defendants, including Getty have filed a response in opposition to that motion which is still pending before the Court. The interrogatories that Plaintiff has propounded, with few exceptions, ignore the limitations of the case as established by the only complaint on file and by discovery from its own records and principals. For these reasons, Getty respectfully objects, among other things, to the dates and geographic scope of Plaintiff's interrogatories.

* * *

4. For the reasons stated above in the Preliminary Statement, Getty objects to the geographic scope of Plaintiff's interrogatories as set forth in paragraph J thereof, insofar as any interrogatory attempts to require Getty to supply information or identify documents unrelated to Algeria or Algerian crude oil.

* * *

6. For the reasons stated above in the Preliminary Statement, Getty objects to the temporal scope of Plaintiff's interrogatories as set forth in paragraph O thereof, insofar as any interrogatory attempts to require Getty to supply information or identify documents dated prior to January 1, 1971 and subsequent to June 17, 1971.

* * *

Interrogatory No. 51. Did you at any time enter into any agreements relative to the purchase or sale of Algerian crude oil?

Answer. For the reasons set forth above in its Preliminary Statement, and in its Objections to Definitions, Getty objects to and respectfully declines to answer this inter-

rogatory on the grounds that it is not relevant to the subject matter of this lawsuit and is not reasonably calculated to lead to admissible evidence.

* * *

Interrogatory No. 61. Did you ever sell crude oil that was to be lifted from Arzew, Algeria?

Answer. For the reasons set forth above in its Preliminary Statement, and in its Objections to Definitions, Getty objects to and respectfully declines to answer this interrogatory on the grounds that it is not relevant to the subject matter of this lawsuit and is not reasonably calculated to lead to admissible evidence.

* * *

RESPONSE OF DEFENDANT OCCIDENTAL PETROLEUM CORPORATION TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 33(a), Defendant Occidental Petroleum Corporation (Occidental) hereby responds to Plaintiff Pan-Islamic Trade Corporation's (Plaintiff or Pan-Islamic) First Set of Interrogatories as follows:

* * *

On December 2, 1974, Pan-Islamic filed a Motion for Leave to Amend its Original Complaint. The Defendants, including Occidental, have filed a response in opposition to that motion which is still pending before the Court. The interrogatories that Plaintiff has propounded, with few exceptions, ignore the limitations of the case as

established by the only complaint on file and by discovery from its own records and principals. For these reasons, Occidental respectfully objects, among other things, to the dates and geographic scope of Plaintiff's interrogatories.

* * *

4. For the reasons stated above in the Preliminary Statement, Occidental objects to the geographic scope of Plaintiff's interrogatories as set forth in paragraph J thereof, insofar as any interrogatory attempts to require Occidental to supply information or identify documents unrelated to Algeria or Algerian crude oil.

* * *

6. For the reasons stated above in the Preliminary Statement, Occidental objects to the temporal scope of Plaintiff's interrogatories as set forth in paragraph 0 thereof, insofar as any interrogatory attempts to require Occidental to supply information or identify documents dated prior to January 1, 1971 and subsequent to June 17, 1971.

* * *

RESPONSE OF DEFENDANT ATLANTIC-RICHFIELD COMPANY TO PLAINTIFF PAN-ISLAMIC TRADE CORPORATION'S FIRST-SET OF INTERROGATORIES

Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 33(a), Defendant-Atlantic-Richfield Company (Atlantic-Richfield) hereby responds

to Plaintiff Pan-Islamic Trade Corporation's (Plaintiff or Pan-Islamic) First Set of Interrogatories as follows:

* * *

On December 2, 1974, Pan-Islamic filed a Motion for Leave to Amend its Original Complaint. The Defendants including Atlantic-Richfield, have filed a response in opposition to that motion which is still pending before the Court. The interrogatories that Plaintiff has propounded, with few exceptions, ignore the limitations of the case as established by the only complaint on file and by discovery from its own records and principals. For these reasons, Atlantic-Richfield respectfully objects, among other things, to the dates and geographic scope of Plaintiff's interrogatories.

* * *

4. For the reasons stated above in the Preliminary Statement, Atlantic-Richfield objects to the geographic scope of Plaintiff's interrogatories as set forth in paragraph J thereof, insofar as any interrogatory attempts to require Atlantic-Richfield to supply information or identify documents unrelated to Algeria or Algerian crude oil.

* * *

6. For the reasons stated above in the Preliminary Statement, Atlantic-Richfield objects to the date scope of Plaintiff's interrogatories as set forth in paragraph 0 thereof, insofar as any interrogatory attempts to require Atlantic-Richfield to supply information or identify documents dated prior to January 1, 1971 and subsequent to June 17, 1971.

* * *

RESPONSES AND OBJECTIONS OF DEFENDANT CONTINENTAL OIL COMPANY TO "PLAINTIFF, PAN-ISLAMIC TRADE CORPORATION'S FIRST SET OF INTERROGATORIES TO DEFENDANTS"

Defendant Continental Oil Company (Continental) submits the following response and objections to Plaintiff, Pan-Islamic Trade Corporation's (Pan-Islamic) First Set of Interrogatories to Defendants pursuant to Rule 33 of the Federal Rules of Civil Procedure, which First Set of Interrogatories were served upon Defendant Continental on June 16, 1975.

* * *

Interrogatory No. 29

Identify by years from 1948 to present who had authority to or was permitted to make or discuss prices of pricing policies, quantities purchased, and quantities to sell of crude oil.

Answer to Interrogatory No. 29

* * *

Continental further objects to this interrogatory on the ground that the same is predicated upon Plaintiff's Amended Complaint which is pending before the Court only upon Plaintiff's Motion for Leave to File Amended Complaint. The Court has not acted upon Plaintiff's Motion for Leave to File Amended Complaint and said Amended Complaint has not been filed and is not the basis for pleading or interrogatories at this time.

* * *

EXCERPTS FROM ATTACHMENTS TO CONTINENTAL OIL'S ANSWERS

COMPAGNIE ALGERIENNE DU METHANE LIQUIDE (CAMEL)

Incorporated January 1, 1969
Under Laws of Algeria

Annual Stockholders' Meeting:	On call of directors within first 6 months of end of each fiscal year
Directors' Meetings:	On call of president director general or one third of the directors
Duration of Charter:	99 years
Character of Business:	Construction and management of liquefaction plant and sale of liquefied natural gas
Principal Office:	B.P. No. 11 Arzew, Algeria
CAPITAL STOCK:	
Par Value:	100 new francs (now quoted as Dinars at par.)
Authorized:	625,000 shares (250,000 "A" and 250,000 "B" shares and 125,000 "C" shares)
Issued:	625,000 shares

SHAREHOLDERS:		Class	Shares	Per Cent
Conch International Methane Ltd.		"B"	249,996	40.0
Continental Oil Co.	)In trust	"B"	1	
Shell Western Holdings	)for Conch	"B"	1	
C. G. Filstead, Jr.	)Int.Methane	"B"	1	
P. L. L. Vrancken	)Limited	"B"	1	
SOCALDEX		"A"	180,000	28.8
Methane Liquide		"A"	35,000	5.6
SOCALEX		"A"	15,000	2.4
COFIDAL		"A"	10,000	1.6
S.D.R.S.		"A"	10,000	1.6
SONATRACH		"C"	125,000	20.0
Issued and Outstanding:			625,000	
Unissued:			None	
Authorized:			625,000	

* * *

COMPAGNIE ALGERIENNE DU METHANE LIQUIDE (CAMEL)

DIRECTORS

A. Chanderli
R. P. Wheeler (Continental Oil Company)
I. A. I. Griffiths (Shell Western Holdings)
C. G. Filstead, Jr. (Conch)
P. L. L. Vrancken (Conch)
O. Khouani (Sonatrach)
M. Mazouni (Sonatrach)
A. Maoui (Sonatrach)
M. Lomri (Sonatrach)
SOCALDEX (not represented at recent meetings)

* * *

CONTINEX FRANCAISE S.A.R.L.

Incorporated August 21, 1974
Under Laws of France

Annual Stockholders' Meeting:	On call
Directors' Meeting:	Not required
Duration of Charter:	99 years
Character of Business:	Marketing of Carbon Black
Principal Office	41 Boulevard des Capucines Paris 75002, France
CAPITAL STOCK:	
Par Value	100 French Francs
Authorized	2,000 shares
Issued	2,000 shares

STOCKHOLDER:	Shares	Per Cent
Continental Carbon Company	2,000	100

* * *

CONTINENTAL OIL COMPANY OF IRAN

Incorporated February 27, 1958
Under Laws of Delaware

Annual Stockholders' Meeting:	First Tuesday in May
Directors' Meeting:	Regular meetings on first Tuesday in May or as otherwise determined by board
Duration of Charter:	Perpetual
Character of Business:	Development in mineral lands
Principal Office:	No. 26, Seventeenth Street Bucharest Avenue Tehran, Iran

CAPITAL STOCK:

Par Value:	$100
Authorized:	10,000 shares
Issued:	10 shares

STOCKHOLDERS:	Shares	Per Cent
Continental Oil Company:	10	100
Issued and Outstanding:	10	
Unissued:	9,990	
Authorized:	10,000	

* * *

CONTINENTAL OIL COMPANY OF LIBYA

Incorporated December 15, 1954
Under Laws of Delaware

Annual Stockholders' Meetings:	First Tuesday in May
Directors' Meetings:	Regular meetings on first Tuesday in May or as otherwise determined by board
Duration of Charter:	Perpetual
Character of Business:	Development of mineral lands
Principal Offices:	High Ridge Park Stamford, Connecticut 06904
	P. O. Box 1075 Tripoli, Libya North Africa

CAPITAL STOCK:

Par Value:	$100
Authorized:	10,000 shares
Issued:	4,000 shares

STOCKHOLDERS:	Shares	Per Cent
Continental Oil Company:	4,000	100
Issued and Outstanding:	4,000	
Unissued:	6,000	
Authorized:	10,000	

* * *

IRANIAN OIL PARTICIPANTS LIMITED

Incorporated September 21, 1954
Under Laws of England

Annual Stockholders' Meeting:	Annually—not more than 15 months after the preceding annual stockholders' meeting
Directors' Meeting:	On notice
Duration of Charter:	Perpetual
Character of Business:	Production, transportation and marketing of crude petroleum and by-products
Principal Office:	3, Finsbury Square London, EC2A 1AR, England

CAPITAL STOCK:

Par Value:	6s. 8d.
Authorized:	3,000,000 shares
Issued:	1,500,000 shares

STOCKHOLDERS:	Shares	Per Cent
Compagnie Francaise des Petroles:	90,000	6
Esso Trading Company of Iran:	105,000	7
Gulf International Company:	105,000	7
Iran California Oil Company:	105,000	7
Mobil Oil Iran Inc.:	105,000	7
Nederlands-Iraanse Aardolie Handel-Maatschappij (Netherlands Iranian Oil Trading Company) N.V.:	210,000	14
The British Petroleum Co. Ltd.:	600,000	40
Texaco Iran Ltd.:	105,000	7
American Independent Oil Company of Iran:	12,500)	
Getty Iran Ltd.:	12,500)	
Arco Iran, Inc.:	25,000)	5
Charter (Iran) Petroleum Co.	12,500)	
San Jacinto Eastern Corp.:	6,250)	
Sohio-Iran Trading Inc.:	6,250)	
Issued:	1,500,000	100

* * *

IRANIAN OIL PARTICIPANTS LIMITED

DIRECTORS

The British Petroleum Company Limited	R. Bexon J. A. Cole
Esso Trading Company of Iran	C. M. Boyer
Compagnie Francaise des Petroles	J. E. J. Danner
Gulf International Company	N. N. Lewis
The Six Iricon Member Companies	W. R. Record
Iran California Oil Company	T. L. Russell
Mobil Oil Iran Inc.	A. F. Ensor
Nederlands-Iraanse Aardolie Handel-Maatschappij (Netherlands Iranian Oil Trading Company) N. V.	P. F. Holmes J. E. Brazell

* * *

OASIS OIL COMPANY OF LIBYA, INC.

Incorporated May 25, 1960
Under Laws of Delaware

Annual Stockholders' Meeting:	Last Thursday of April, 10 a.m.
Directors' Meetings:	On call
Duration of Charter:	Perpetual
Character of Business:	Development of mineral lands
Principal Office:	Post Office Box 395 Tripoli, Libya
Corporate Address:	100 West Tenth Street Wilmington, Delaware

CAPITAL STOCK:

Par Value:	$1.00
Authorized:	3,000 shares
Issued:	3,000 shares

STOCKHOLDERS:	Shares	Per Cent
Marathon Petroleum Libya, Inc.:	1,000	33⅓
Continental Oil Company of Libya:	1,000	33⅓
Amerada Petroleum Corporation of Libya:	1,000	33⅓
Issued and Outstanding:	3,000	100

* * *

IRANIAN OIL SERVICES (HOLDINGS) LIMITED

Incorporated September 21, 1954
Under Laws of England

Annual Stockholders' Meeting:	Annually—not more than 15 months after the preceding annual stockholders' meeting
Directors' Meetings:	On notice
Duration of Charter:	Perpetual
Character of Business:	Production, transportation and marketing of crude petroleum and by-products
Principal Office:	3, Finsbury Square London, EC2A, 1AR, England

CAPITAL STOCK:

Par Value:	6s. 8d.
Authorized:	50,000 shares
Issued:	30,000 shares

STOCKHOLDERS:	Shares	Per Cent
Compagnie Francaise des Petroles:	1,800	6
Esso Trading Company of Iran:	2,100	7
Gulf International Company:	2,100	7
Iran California Oil Company:	2,100	7
Mobil Oil Iran Inc.:	2,100	7
Nederlands-Irannse Aardolie Handel-Maatschappij (Netherlands Iranian Oil Trading Company) N.V.:	4,200	14
The British Petroleum Co. Ltd.:	12,000	40
Texaco Iran Ltd.:	2,100	7
American Independent Oil Company of Iran:	250)	
Getty Iran Ltd.:	250)	
Arco Iran, Inc.:	500)	5
Charter (Iran) Petroleum Co.:	250)	
San Jacinto Eastern Corp.:	125)	
Sohio-Iran Trading Inc.:	125)	
Issued:	30,000	100

* * *

IRANIAN OIL SERVICES (HOLDINGS) LIMITED

DIRECTORS

The British Petroleum Company Limited	R. Bexon J. A. Cole
Esso Trading Company of Iran	C. M. Boyer
Compagnie Francaise des Petroles	J. E. J. Danner
Gulf International Company	N. N. Lewis
The Six Iricon Member Companies	W. R. Record
Iran California Oil Company	T. L. Russell
Mobil Oil Iran Inc.	A. F. Ensor
Nederlands-Iraanse Aardolie Handel-Maatschappij (Netherlands Iranian Oil Trading Company) N. V.	P. F. Holmes
Texaco Iran Ltd.	J. E. Brazell

* * *

APPENDIX 15

EXCERPTS FROM
TRANSCRIPT OF PROCEEDINGS
JUNE 10, 1976
2:00 P.M.

* * *

MUSSLEWHITE: We have to get interrogatories answered and get down the road to discovery before we can know, Your Honor.

THE COURT: Why haven't you all answered these interrogatories?

MR. SIMON: Your Honor, may I say we did answer our interrogatories eleven months ago.

* * *

MR. GOCHMAN: He did not answer the interrogatories. He didn't answer over twenty of a hundred-odd interrogatories, almost all of them coming from the manual of complex litigatic

That's directly contrary to what he answered.

He just answered maybe one-fifth of the interrogatories and that's the same with all the defendants except Conoco.

* * *

MR. REASONER: But I don't think that Mr. Gochman can dispute that he has had very complete responses relating to the business of buying and selling Algerian crude which is all that Pan-Islamic could possibly complain about.

* * *

MR. MUSSLEWHITE: The position they are taking, Your Honor, is that we withhold these answers about our world-wide situation and then get a summary judgment because we are not going to give you those answers.

Then nobody is ever going to be able to pierce the veil of this monopoly. That's the fact of the matter.

We are just here today saying, Your Honor, give us a chance to get those answers and let's get experts on the trial and see if we can prove, we believe we can, based on other extraneous evidence that there was such a monopoly and that it had causation effect to our particular contract.

* * *

THE COURT: I am not pre-judging the case, but from just what I have heard here today, it sounds like a very frivolous lawsuit, not in the sense that it's intentionally frivolous and not in the sense that you are now engaged in a strike (sic) lawsuit.

* * *

THE COURT: Now, I would dismiss this lawsuit as a frivolous lawsuit, really, if I thought the Fifth Circuit wouldn't reverse me and put it down here because I think it's frivolous now. I am not prejudging the case.

* * *

THE COURT: He is trying to support his particular motion for summary judgment to get his client out of it.

MR. GOCHMAN: Yes, Your Honor, He won't give us any answers to interrogatories to let us begin the first phase of discovery in the questions we have asked.

* * *

MR. MUSSLEWHITE: Again, Your Honor, may I say it goes back to the question of whether or not—

THE COURT: I am not going to give them a judgment today. I should, I think it's a frivolous lawsuit. I don't think it has any merit to it. I don't think you can ever show me what you want to show. I really don't.

* * *

THE COURT: I am going to let you amend over everybody's objections.

* * *

MR. GOCHMAN: We are not saying nobody can go out and sell oil.

If it fits into the perimeters (parameters) to what the defendants allow to be done—

THE COURT: You did worse than that. You didn't fit it in. You charged them more and you are complaining because they didn't buy it.

I don't thnk it's fair to the defendants to make them answer questions so broad as that when I still can't understand, I really can't understand. You are so insistent, but I really can't understand, if everything you say is true.

Suppose everything—you take all this discovery. You put this court to all this time and expense and you put all these people to this great expense and nothing comes of it and there is no connection between their activities and your little company.

Whose going to pay for all this?

MR. GOCHMAN: That's a problem. The plaintiffs

don't have any money to pay for it, Your Honor. That's true.

But we would not be pursuing this if the United States wasn't pursuing the same thing in the F.T.C. complaint, if the grand juries hadn't found the same thing to have occurred.

There is no way we would be pursuing it.

* * *

THE COURT: In these cases, the fact issues are so complicated, the plaintiff can allege anything to avoid a summary judgment.

What's worrying me is that I have another several hundred cases I have to devote some time to. If I start worrying about what kind of discovery and the plaintiffs are trying to follow in the footsteps of a grand jury, which has another legitimate interest or F.T.C. and try to follow in their footsteps, then I am going to spend all my time in the next few months deciding which questions they can ask and which questions they can't and if I just let you ask anything, then you will be putting them to a great, great expense and when it all got through, I still don't know how it would help you in your case, if I have to go through all of these depositions on all of the defendants and write opinions on motions for summary judgment, I couldn't do anything else.

* * *

THE COURT: I know what's going to happen, though. I will be seeing you every two weeks on what questions they are going to ask and what questions they are going to answer.

* * *

THE COURT: That's what I tried to point out and was saying that this is not a grand jury.

The problem is whether or not this particular company is injured by the actions of the defendants and I really think in law, in law it's a frivolous lawsuit.

* * *

MR. GOCHMAN: We have not filed motions to compel answers to interrogatories because of the rule and would like to have these interrogatories that we have asked that we were not answered, we would like to have them answered.

THE COURT: They have answered a large number of interrogatories, from what I understand, and the ones that they haven't answered, they feel that the reason they haven't answered is they are not pertinent and they will be oppressive and not relevant to the issues of the case.

* * *

MR. GOCHMAN: It is not to produce these documents and answer these specific questions.

THE COURT: Yes. I am sure that all of your pleadings conform to the Manual for Complex Litigation because it's very easy to do that. All you do is give to your secretary and she types it up.

MR. GOCHMAN: It didn't happen that way, Your Honor. But I am saying that the preliminary questions, finding out where things are, rather than finding substantive answers which would have been the next step.

THE COURT: Well, I will look at everyone of them individually if it takes all my time. That's all I can do.

Each question that they haven't answered that you still feel ought to be answered, you send me the questions and I will look at the questions and I will either sit down with you and the other people and we will argue about it, haggle about it, I will do that.

But I think it's unfair of you to ask me to go through all the interrogatories and find out myself the ones they didn't answer that you thing are germane.

* * *

THE COURT: I agree with that. That's why I say that you again ask them anything you want to ask them, that you haven't already received in thirty days.

Then the ones that they can't answer or they answer adverse to their position or ones that they don't want to answer for some reason, I will rule on your motion to compel them to answer.

On the other hand, after they have answered and you see you have a motion for summary judgment that's ripe, you can file it and I will rule on it.

Then after we do that, we will let the plaintiff ask the defendants any questions they want to, engage in their discovery.

And then I will rule on whether or not you should answer some questions you don't want to answer.

* * *

MR. SIMON: The case was filed two years and two months ago and the plaintiff hasn't taken a single deposition as far as the Shell Oil Company is concerned and he can start taking depositions of our people tomorrow morning and he doesn't have to wait for anything. If he

will just serve me with a notice whose deposition he wants to take, the man will be there and be deposed and I would like to urge Your Honor to fix a cutoff date when the plaintiff will finish taking whatever depositions he wants in this case and then we can argue the motion for summary judgment and he will have had his depositions.

MR. GOCHMAN: How can I do that if they won't answer the interrogatories telling me who is where and what, tell me who in their company does the various things, where in the company the various things are.

They answered about twenty out of one hundred and twenty interrogatories.

* * *

THE COURT: I assume what you have done is you have looked in the Manual for Complex Litigation; you have given your secretary this book and said, copy those down and serve them on the defendants.

MR. GOCHMAN: Not at all, Your Honor.

THE COURT: All right. You haven't done that. You asked for one hundred and twenty questions to be answered?

MR. GOCHMAN: Yes.

* * *

MR. BURTON: Has Your Honor ruled on the amended complaint?

THE COURT That is open.

MR. NORRIS: It would affect the scope of discovery.

MR. REASONER: No. I think the judge made it clear that it has reserved his ruling on that.

THE COURT: I am not ruling on the amended complaint. I have already said that.

* * *

The defendants will engage in discovery and complete their discovery on their original complaint within thirty days, that is, the defendants will engage in their discovery.

Then if the plaintiffs are not satisfied with any of the —I am sorry—if the defendants are not satisfied with any of the responses of the plaintiff, they will file a motion to compel. I will rule on that.

Then we will allow the plaintiff thirty days after that to engage in discovery based on the original complaint and it the plaintiffs are not satisfied with the response of the defendants, then they can file a motion to compel and I will not entertain any motion for summary judgment until that takes place. I think that's fair enough.

* * *

MR. GOCHMAN: (For plaintiff) I just wanted to be sure where the proposed amended complaint comes in.

THE COURT: I haven't ruled on it. It's still a motion, the amended complaint.

I have said that discovery will be directed toward the original complaint.

Now, after the case is two years old, you bring in an amended complaint.

MR. GOCHMAN: No, Your Honor. We filed the amended complaint when the case was five or six months old.

THE COURT: I haven't ruled on it?

MR. GOCHMAN: You haven't ruled on it. We filed it here on October 31 (1975) and notified the court we were amending and gave a summary to the defendants of what we were going to amend in December which we actually filed the amendment but everybody knew we were amending and knew the contents of it basically at the hearing of October 31, which was only about five or six months from the date of filing of this lawsuit.

THE COURT: Did I have a hearing on it?

MR. GOCHMAN: No, Your Honor. You were tied up with a lot of litigation. We went in the back room and the court postponed a hearing for discovery and other things and did not rule on the amended complaint at that time but we did file within almost six months of date of filing the suit.

THE COURT: The amended complaint really wants to open up world-wide operations of these companies.

MR. GOCHMAN: The general world-wide conspiracy of the oil industry of these defendants, yes, sir.

* * *

MR. MUSSLEWHITE: Your Honor, may I ask one question that goes to discovery?

During the six months period, will we have the right—they are not going to answer some questions we feel are material, have a right to come to the court and file a motion to compel?

THE COURT: That's what I am trying to avoid.

MR. MUSSLEWHITE: We want to avoid it, too. But for us to have meaningful discovery and be able to

respond motions for summary judgment, I understand it will be heard at the end of six months period.

THE COURT: If I have a case like they have up in New York with two hundred and thirty-five civil cases on the docket every year and they have a large number of hard working judges, it would be difficult, but I am going to get eight hundred civil cases this year and I have to try two or three times more than they do up north and when we get a large number of complex litigation—

MR. MUSSLEWHITE: I was going to suggest if we could have at least one hearing on the motion, I think the question—

THE COURT: I think the real question is whether or not I am going to let you amend the complaint.

MR. REASONER: I think that's right, Your Honor. I think if they ask questions which we say are not at issue in the case, the time for you to resolve the discovery is at the time you consider our motion for summary judgment. If you decide we are wrong on the issue involved and they should have discovery and you can deny the motion for summary judgment and grant the appropriate discovery at that time.

* * *

MR. SIMON: I think we can convince you as a matter of law that isn't true. I don't think we should decide such an important matter on ten or fifteen minutes of argument.

THE COURT: Suppose I would rule right now that they cannot amend their complaint?

MR. SIMON: I think that will shorten the case im-

measurably and would be exactly in accord with the Fifth Circuit's rule in *Martin vs. Phillips.*

MR. MUSSLEWHITE: If that's the case he referred to a moment ago, I believe it is, we have got a contract here—

MR. SIMON: They have a contract there—

THE COURT: Off the record.

(Discussion off the Record.)

THE COURT: I am going to overrule your motion to amend the complaint. I will give you an interlocutory appeal.

* * *

MR. MUSSLEWHITE: In the meantime, you know that's our position that the original complaint justifies discovery pretty much almost as broad as we are seeking now because it does go to how this boycott or embargo of Algerian oil came about, what was involved in it as far as the defendants' participation is concerned.

* * *

THE COURT: The problem is going to be that I am going to have to suffer now, the litigants are going to suffer because I am going to be using all my time settling disputes between lawyers—

MR. MUSSLEWHITE: Which we could resolve by you moving to compel on our interrogatories.

THE COURT: No way, no way.

* * *

THE COURT: All I can say, Mr. Musslewhite, is that you engage in discovery under the order that I have given heretofore and I have to pass on every question one at a time.

Is that satisfactory with the defendant?

DEFENDANT ATTORNEYS: Yes, Your Honor.

MR. REASONER: We can obtain the transcript and I will be glad to prepare a formal order and submit it to Mr. Gochman and submit it to the court.

THE COURT: That's all I can do. Otherwise, I would never conclude this case the way it's postured now. I would have to make—see, I thought I could make a decision just then and now as soon as I make a decision, MR. MUSSLEWHITE says it doesn't make any difference or not because the amended complaint, because they still want all that information.

I will rule on that item by item.

Court is adjourned.

APPENDIX 16

EXCERPTS FROM MOTION OF PLAINTIFF TO RECONSIDER ORDER OF COURT DENYING PLAINTIFF'S MOTION TO EXTEND TIME FOR DISCOVERY

* * *

(i) On November 1, 1974 Motion and Order was filed by the Court reflecting that both parties would adhere to the time periods for filing various pleadings as set forth in the agreement and that Plaintiff's Motion concerning discovery would be deferred to a hearing *after the Court had ruled upon Plaintiff's Motion for Leave to File Amended Complaint.*

* * *

(1) The Plaintiff did go ahead and proceed to file interrogatories prior to August of 1975, only to receive from each Defendant, beginning August 29, 1975, objections of the Defendants to the Interrogatories and a response to only about 20 of the 100 questions submitted.

* * *

(o) All the while discovery by the Defendants continued, the Defendants continued to fail to respond to Plaintiff's Interrogatories except to answer only 20 out of 100 submitted and objected to answering the rest of them. The Plaintiff filed Motions to Compel Answers to those Interrogatories, all of which are still pending.

* * *

(q) Thereafter, an agenda was set by the Court for that conference, which included the Plaintiff's Motion

to Compel the Defendants to answer the Interrogatories, the Summary Judgments of the Defendants, the Defendant's Motion to Compel the Plaintiff to submit a list of contacts, and the amended complaint of the Plaintiff.

(r) It will be recalled that all during this time, as Plaintiff's counsel advised the Court on October 31, 1974 at the first pre-trial conference, Plaintiff could not begin its discovery in earnest until the Court had ruled upon its amended complaint, the Court indicating on that date there probably would be no problem with the amended complaint but that the Court would take it up at a later time; the Court, up until June 10, 1976, did not rule on the amended complaint, therefore, Plaintiff could not begin its orderly discovery inasmuch as it did not know the extent to which it would be permitted to discover the documents, records, witnesses and testimony of the Defendants.

* * *

(u) In the meantime, the June 10th Order did not act upon Plaintiff's Motions to Compel the Defendants to answer their interrogatories; therefore, *no action to date* has been taken upon Plaintiff's Motion to Compel the Defendants to answer its interrogatories.

* * *

(w) In the meantime, the Plaintiff, being stalled in its efforts to get basic information from Defendants by interrogatories, began to plan its depositions which required an extensive effort to determine the appropriate persons and positions to be deposed, and on October 13, 1976 submitted its request to all Defendants for the various depositions it would like to take and immediate planning

began on those depositions (the letter of October 13, 1976 is attached hereto as Exhibit "I").

(x) Since that time the depositions of three of the company representatives have been taken: Exxon Corporation, Tenneco Company and Shell Oil Company.

(y) Other depositions were being arranged with all counsel for the Defendants. Plaintiff might say that all counsel for the Defendants have been as cooperative as possible in arranging said depositions, but as is obvious from the letter request of October 13, 1976, many depositions are requested and, as will be pointed out hereinafter, the depositions that have been taken have yielded information which suggests a need to take additional depositions with respect to each Defendant.

* * *

(aa) At the deposition of Messrs. Doyle and Ellis of Exxon Corporation, after receiving their testimony, it was obvious that Plaintiff would have to file motions for Inspection and Production of documents. Counsel for Exxon at those depositions stated on repeated occasions that in order to obtain any documents of the company, that such motion would be necessary. Plaintiff has now prepared the motion in connection with the Exxon deposition and does hereby attach a copy of same as Exhibit "K" for the benefit of the Court. Plaintiff would like to file the original of said motion for inspection but in view of the Court's Order entered last Thursday to the effect that discovery would not be extended, Plaintiff has not done so; however, Plaintiff submits that the attached Motion for Inspection and Production of documents show on its face its importance to Plaintiff's case and its relevancy to this cause.

* * *

(cc) The transcript of the June 10, 1976 hearing indicates that all parties understood that there was no question but that the ruling of the Court on the amended complaint would affect the scope of discovery; as an example, on page 121 of the transcript, the following colloquy takes place; to wit:

> "Mr. Burton: Has your honor ruled on the amended complaint?
>
> The Court: That is open.
>
> Mr. Norris: *It would affect the scope of discovery.*" (Mr. Norris is counsel for the Exxon Corporation. Page 121 of the transcript of proceedings).

* * *

(ee) At that same hearing, while the Court was considering the Motion for Leave to File the Amended Complaint, the undersigned, representing the Plaintiff, did ask the Court if there could be a hearing on our Motions to Compel Answers to certain Interrogatories, all of which would have been very helpful to our discovery process, and the following took place:

> "Mr. Musslewhite: I was going to suggest if we could have at least one hearing on the Motion to Compel Answers to Plaintiff's Interrogatories, I think the question—
>
> The Court: I think the real question is whether or not I am going to let you amend the complaint."
>
> (Page 130 of transcript).

Again the Court recognized that the nature of the discovery hinged to a large extent upon the Court's ruling upon the Amended Complaint.

* * *

(ff) It was *after* the Court had granted, in the June 10, 1976 hearing, the six months discovery that it did overrule Plaintiff's Motion for Leave to File its Amended Complaint and granted an interlocutory appeal (page 139 of transcript). After that ruling, again counsel for Plaintiff urged the Court to allow Plaintiff to move to compel answers to Plaintiff's Interrogatories so as to expedite and make realistic discovery possible (as Gochman had earlier pointed out the Defendants answered only about 20 out of 120 questions). This was reflected in the following colloquy:

> "Mr. Musslewhite: Which we could resolve by you moving to compel on our interrogatories.
>
> The Court: No way, no way.

* * *

It was over a year and one-half after the Plaintiff's filed their Motion for Leave to File the Amended Complaint before the Court ruled on the Motion. Until the Court ruled on June 10, 1976, Plaintiff could not determine the course it would have to take for effective discovery.

* * *

It was obvious to Plaintiff that Plaintiff would have to effectuate its discovery through depositions *only*, since the Court in the hearing on June 10, 1976 had decided not to allow Plaintiff to bring up for hearing its Motions to Compel Answers to its Interrogatories by the Defendants. (See above excerpts from the Transcript of proceedings on June 10, 1976).

* * *

As stated at the hearing on June 10, 1976 by counsel for Plaintiff it was anticipated that certain hearings would be necessary to help effectuate Plaintiff's discovery process. We advised the Court that we were going to have to have rulings on motions to compel answers to the interrogatories and other motions to determine the limits and scope of our discovery. This has come to pass in the position of Exxon and Shell (see Depositions taken) that they will not produce one single document absent a Motion to Compel the Inspection, Production and Reproduction of documents. It is probable that this process is going to have to be repeated with each and every one of the Defendants.

* * *

It may be that at the end of that six month period, unless the Court has had the time to consider various motions to compel and motions to inspect documents, etc., that another extension will be necessary; and even if the Court has ruled upon the various motions to compel and motions to inspect documents, it may be that the depositions of other Defendants will bear the fruit of additional information making additional discovery necessary. This is certainly not uncommon in this type case. We submit to the Court that it is necessary for us to take depositions, and we are in the process of arranging those depositions, of the following witnesses or groups of witnesses which are not included among those of the Defendant companies listed in the October 13, 1976 letter, to-wit:

(a) Representatives of Bunker Hunt and his company that had dealings with Libyan and other middle eastern oil nations (copy of the petition in the Bunker Hunt case is attached hereto as Exhibit "L" so that the Court can

see the implied relevance of that situation to the one in Algeria, and we ask the Court to particularly note the antitrust allegations of Bunker Hunt against the Major oil companies);

(b) Monsieur Abderahim and other representatives of Sonatrach, the government owned oil company of Algeria;

(c) Joseph Buchanan of Petroco Oil Company, who helped renegotiate a lower price for the Pan Islamic group from Sonatrach;

(d) The depositions of various economists, two of which had intimate knowledge of the Algerian-French situation and its effect upon the major oil companies and the implied response of the major oil companies.

* * *

Opposition

81-167

No. [redacted]

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FILED
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ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

PAN-ISLAMIC TRADE CORPORATION,
Petitioner,

v.

EXXON CORPORATION, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

[List of Counsel Appears at End of Brief.]

September 3, 1981

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion under Fed. R. Civ. P. 15(a) in denying petitioner leave to amend its complaint.

2. Whether the trial court abused its discretion in determining the scope of discovery.

3. Whether summary judgment was properly granted on Pan-Islamic Trade Corporation's complaint alleging a conspiracy to boycott Algerian crude oil in violation of section 1 of the Sherman Act.

PARTIES

In accordance with Rule 28.1 of the Rules of the Supreme Court, the parties to this proceeding and their respective parent, subsidiary and affiliate corporations are set forth in the accompanying Appendix.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1518

PAN-ISLAMIC TRADE CORPORATION,
Petitioner,

v.

EXXON CORPORATION, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals is reported at 632 F.2d 539 (5th Cir. 1980) (Petitioner's Appendix 5 at A51).[1]

The opinions of the district court are reported at 1976-2 Trade Cas. ¶ 61,024 (S.D. Tex. 1976) (Pet. App. 1 at A1) and at 1978 Trade Cas. ¶ 61,850 (S.D. Tex. 1978) (Pet. App. 4 at A13).

JURISDICTION

The opinion of the court of appeals (Pet. App. 5) was rendered on December 10, 1980. A petition for rehearing and suggestion for rehearing en banc was denied on

[1] Citations to the appendices to the Petition for Writ of Certiorari are hereinafter abbreviated "Pet. App."

March 25, 1981 (Pet. App. 6). The petition for a writ of certiorari was filed in improper form on June 23, 1981 and, by direction of the Clerk of the Court, was rewritten, printed and received by the various Respondents on or about August 3, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Pan-Islamic Trade Corporation's ("Pan-Islamic") Statement of the Case materially distorts and misstates the record below. The opinion of the trial court granting summary judgment is a careful and fair statement of facts complete with citations to the record. 1978 Trade Cas. ¶ 61,850 (Pet. App. 4 at A13). The opinion of the court of appeals similarly contains a fair and detailed statement of facts. 632 F.2d 539 (Pet. App. 5 at A51).

REASONS FOR DENYING THE WRIT

The Issues Raised by the Petition Were Fully and Properly Considered by the Courts Below and Do Not Justify Invocation of this Court's Certiorari Jurisdiction

This cause was decided in the trial court by the careful application of well-settled principles of law. The trial court's discretionary decision denying leave to amend, its discretionary rulings regarding the scope of discovery, and its grant of summary judgment were reviewed by the court of appeals in a meticulously detailed decision. There is nothing about this case that merits invocation of the certiorari jurisdiction of this Court. Sup. Ct. R. 17.

Pan-Islamic's arguments on the merits were fully dealt with by both the trial court and court of appeals. We submit that the factual analysis and reasoning of those courts is fully persuasive.

Denial of leave to amend was well within the trial court's discretion under Fed. R. Civ. P. 15(a). *See Foman* v. *Davis*, 371 U.S. 178, 182 (1962). Pan-Islamic's

sole connection with the petroleum industry and its only claim of injury involved a single purchase and alleged efforts to resell Algerian crude oil. Under the original complaint, Pan-Islamic was free to pursue its claim against Respondents for any conduct designed to effectuate a boycott of its Algerian crude. As recognized by the courts below, Pan-Islamic had no standing to pursue the proposed amended complaint's sweeping and conclusory allegations of conspiracies in segments of the industry in which Pan-Islamic had no involvement and which were unrelated to the purchase of Algerian crude. *See* Court of Appeals Opinion, 632 F.2d at 545-48, Pet. App. 5 at A58-A66.

The court of appeals' careful analysis demonstrates that the trial court, consistent with its obligation to effectuate the administration of justice, gave Pan-Islamic repeated opportunities to engage in discovery. Pan-Islamic had over three years for discovery after filing its complaint on April 4, 1974. For reasons sufficient to itself, Pan-Islamic did not actively pursue discovery and did not avail itself of the opportunities permitted. Nor did Pan-Islamic file with the trial court a Fed. R. Civ. P. 37(a) motion pointing out complaints it had regarding either the adequacy of answers to the 120 interrogatories it had served on each of the fifteen Respondents or the responses of witnesses in depositions. A trial court cannot fairly be asked to review 1,800 interrogatory answers or hundreds of pages of deposition transcripts on the basis of generalized oral complaints at pretrial hearings. *See* Court of Appeals Opinion, 632 F.2d at 549-53, Pet. App. 5 at A66-A77. The administration of justice requires that the trial court control discovery in a case of this type. It did so in a fair manner well within its discretion. *See National Hockey League* v. *Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976).

Pan-Islamic's objections to the district court's grant of summary judgment are comprised of perjorative attacks

on the trial court and court of appeals. Throughout its argument, Pan-Islamic materially misstates the record. The court of appeals' painstaking analysis of the record demonstrates that Pan-Islamic simply failed to produce admissible evidence to support its conclusory allegations as Fed. R. Civ. P. 56(e) requires. *See* Court of Appeals Opinion, 632 F.2d at 553-64, Pet. App. 5 at A78-A104. In affirming the district court's grant of summary judgment in "the absence of any significant probative evidence tending to support the complaint," the court of appeals properly applied the principles articulated by this Court in *First National Bank* v. *Cities Service Co.*, 391 U.S. 253, 291 (1968).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

LIST OF PARENT, AFFILIATE AND SUBSIDIARY CORPORATIONS REQUIRED BY RULE 28.1

EXXON CORPORATION

Exxon Corporation lists the following subsidiaries and affiliates whose stock or debt securities are publicly traded in the United States or Canada: Exxon Pipeline Company, Imperial Oil, Limited and Reliance Electric Company.

ATLANTIC RICHFIELD COMPANY

Alyeska Pipeline Service Company
Badger Pipe Line Company
Black Lake Pipe Line Company
Chapin, Kieley & Howe, Inc.
Colonial Pipe Line Company
Cook Inlet Pipe Line Company
Delaware Bay Transportation Company
Dixie Pipe Line Company
East Texas Salt Water Disposal Company
Flower Street Limited
Gravity Adjustment, Inc.
Griffith Consumers Company
Hardy Oil Company
Hydrokem Performance Chemical Company
Iricon Agency Ltd.
Kenai Pipe Line Company
Lavan Petroleum Company
Montoro, Empresa Para La Industria Quimica
Nihon Oxirane Company Ltd.
Oil Shippers Service, Inc.
Ontario Terminals, Inc.
Platte Pipe Line Company
Sinclair Venezuelan Oil Company

Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company
Trans Mountain Oil Pipe Line Company

TEXACO INC.

Refineria Texaco de Honduras, S.A.
Texaco Agro-Industrial (Nigeria) Limited
Quimica Industrial "FIDES" S.A.
Texaco Canada Inc.
Public Fuel Transmission Systems Limited
Great Eastern Oil & Import Co. Limited, The
Texaco Norway A/S
Deutsche Texaco Aktiengesellschaft
Texaco Portugal Prospeccaoe Producao, S.A.R.L.
Texaco North Sea Norway A/S
Texaco Gabon
Texaco Togo
Zaire-Texaco S.A.R.L.
Texaco Nigeria Limited
Texaco-Cities Service Pipe Line Company
Tadlaqaz S.A.
American Overseas Petroleum Limited
Bunkerservice Brunsbuttel G.m.b.H.
Societe Ivoirienne De Futs et D'Emballages (Sifembal) (See Texaco Cote D'Ivoire)
Societe Guineenne De Lubrifiants et D'Emballages (SOGUILUBE) (See Texaco Africa Ltd.)
Caltex Petroleum Corporation
Australian Lubricanting Oil Refinery Limited
Phoenicia Oil Company S.A.L.
Botany Bay Tanker Company (Australia) Pty. Limited
Sydney Metropolitan Pipeline Pty. Limited
Koa Oil Company, Limited
Mediterranean Refining Company
Nippon Petroleum Refining Company, Ltd.
Tokyo Tanker Company, Limited

Caltex Deutschland G.m.b.H.
Caltex Mediterranean Limited
Condea Chemie G.m.b.H.
Federated Pipe Lines Ltd.
Flexibox G.m.b.H.
LPG de Panama, S.A.
Pembroke Capital Company Inc.
P.T. Caltex Pacific Indonesia
Petrogas, S.A.
Texaco Maroc
Societe Ivoirienne D'Avitaillements Portuaires (S.I.A.P.)
Societe Ivirienne D'Entrepasage De Produits Petroliers (S.I.E.P.P.)
Badger Pipe Line Company
Bayonne Industries, Inc.
Canyon Reef Carriers, Inc.
Colonial Pipeline Company
Coltexo Corporation
Dixie Pipeline Company
Explorer Pipeline Company
Felix Oil Company
Kaw Pipe Line Company
Laurel Pipe Line Company
LOCAP Inc.
LOOP Inc.
Olympic Pipe Line Company
Portland Pipe Line Corporation
Texas-New Mexico Pipe Line Company
THUMS Long Beach Company
West Shore Pipe Line Company
Wolverine Pipe Line Company
Wyco Pipe Line Company
Aircraft Fuel Supply B.V.
Airport Refueling Services S.p.A.
Aktiebolaget Svensk Petroleumlagring
Alberta Products Pipe Line Ltd.
Arabian American Oil Company

Associated Octel Company Limited, The
Aviation Fuel Services Ltd.
Boral Limited
New Zealand Refining Company Limited, The
South Africa Oil Refinery (Proprietary) Ltd.
Batangas Land Company Inc.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Ndola Oil Storage Company Limited
Central African Petroleum Refineries (Private) Ltd.
East African Oil Refineries Limited
H. C. Sleigh Limited
Pakistan Refinery Limited
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage (S.R.E.)
Cia. Refinadora Petrolera Santo Domingo Inc.
Deutsche Transalpine Olleitung GmbH
Forenade Svenska Oljeimportorers AB
Frevlig A.G.
Gas Natural Colombiano S.A.
Ghana Bunkering Services Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Irish Refining Company Limited
Maghreb Gaz S.A.
Mainline Pipelines Limited
Miland Airport Refueling Services, S.p.A. (MARS)
Mitsui-Texaco Chemicals Co., Ltd.
Montreal Pipe Line Company Limited
N.V. Rotterdam Rijn Pijpleiding Maatschappij
Oberheinische Mineralolwerke G.m.b.H.
Pars Investment Corporation
Pipelines of Puerto Rico, Inc., The
Raffinerie du Sud-Ouest S.A.
Refinery Services Company S.A.
Rheem del Ecuador C.A.
Rhein-Mein Rohrleitungstransportgesellschaft m.b.H.
Saudi International Petroleum Carrier Ltd.

Sierra Leone Petroleum Refining Company, Limited, The
Skandinaviska Raffinaderi Aktiebolaget Scanraff
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali (SARPOM)
Societe Africaine de Raffinage S.A. (SAR)
Societe Anonyme de la Raffinerie des Antilles (SARA)
Societe D'Entreposage de Bobo-Dioulasso
Societe Camerounaise d'Entreposage (SCE)
Societe Dakaroise d'Entreposage S.A. (SDE)
Societe d'Entreposage de San Pedro S.A. (SESP)
Societe d'Entreposage Petrolier au Burundi S.A.R.L. (SEP-BURUNDI)
Societe De Manutention Des Carburants Aviation Dakar-Yoff (SMACADY)
Societe Gabonaise de Raffinage (SOGARA)
Societe Gabonaise d'Entreposage de Produits Petroliers S.A. (SGEPP)
Societe Tchadienne d'Entreposage de Produits Petroliers S.A. (STEPP)
Societe Togolaise d'Entreposage S.A. (STE)
Svensk Petroleum Forvaltning Aktiebolag
Tankanlage AG Ruemlang (TAR)
Texaco Mexicana, S.A.
Transalpine Finance Holdings S.A.
Transalpine Olleitung in Osterreich GmbH
Trinidad Asphalt Holdings Limited
Trinidad Northern Areas Limited
Trinmar Limited
Trintovac Developments Limited
United Kingdom Oil Pipelines Limited
Unterflur Betankungsanlage A.G. (UBAG)
West Australian Natural Gas Pty. Limited
Zaire Services des Entreprises Petrolieres (Zaire S.E.P.)

Aktiebolaget Djurgardsberg
Association Petroliere Belge
Aviation Fueling Services, S.A.
Aviation Service Center
Compagnie Entreposage Communautaire
Singapore Refining Company Private Limited
Societe Belge de Transport Par Pipeline S.A.
Societe de Cabotage Petrolier S.A.
Societe du Pipeline Sud-European S.A.
Societe Nationale de Raffinage
Svensk Petroleumadministration AB
Total Centrafricaine de Gestion
Societe Agricole des Enterprises Petrolieres
Union des Raffineurs Belges
Svensk Petroleumlagring Tre Aktienbolag
Societe Cameraunaise des Depots Petroleirs (SCDP)
TNPL
AK Chemie GmbH & Co. KG
Bergemann KG
Braunkohle-Benzin AG
Knoops & Muller Mineralolhandel GmbH
Karlsruhe-Stuttgart Rohrleitung GmbH
Bremer Mineralolhandel GmbH
Dannenberg & Co. Mineralolhandel GmbH
Mdina Weave Ltd.
W. Knierim & Co. Mineralolhandel GmbH
Boske & Co. Mineralolhandel GmbH
HoeTex Beteiligungsgellschaft mbH
Wichmann Beteiligungsgesellschaft mbH
Caluplast Farbenfabriken Wichmann
Zerssen Mineralolhandel GmbH & Co. GmbH

GULF OIL CORPORATION

Afran Bahamas Ltd. Marine Dept.
Alberta Products Pipe Line Ltd.
Allied-General Nuclear Services
American Heavy Lift Shipping Company
Asia Polymer Corporation

A/S Jargul
A/S Jargul and Co. K/S
Australian Gulf Oil Company
Balinesian Gulf Oil Ltd.
Britama Tankers Limited
Cabinda Gulf Oil Company
Canada Systems Group (EST) Limited
Carboquimica, S.A.
China Gulf Oil Company, Ltd.
China Gulf Plastics Corporation
Colonial Pipeline Company
Compania Petrolera Aguarico S.A.
Compagnie D'Investments Pour Les Combustibles De Reacteurs a Haute Temp
Coser S.A.
Eastern Gulf Oil Company, Ltd.
Eastern Venezuela Gas Transport Company
Ethylene Pijpleiding Maatschappij (Belgium) S.A.
Ethylene Pijpleiding Maatschappij (Nederland) B.V.
Explorer Pipeline Company
Gaelic Oil Co. Ltd.
G & C Realty Limited
General Atomic Company
General Atomic Europe—G.m.b.H.—Zurich
Gulf Canada, Ltd.
Gulf-Dravo Systems Corporation
Gulf Ecuatoriana de Petroleo, S.A.
Gulf Italia Production Co. S.p.A.
Gulf Italiana SpA
Gulf Oil A/S
Gulf Oil (Belgium) SA
Gulf Oil Chemicals Company Asia Limited
Gulf Oil Company (Nigeria) Ltd.
Gulf Oil Company of Gabon
Gulf Oil Company (Portugal) Limited
Gulf Oil Company South Asia

Gulf Oil Egypt, Ltd.
Gulf Oil (Great Britain) Ltd.
Gulf Oil (Ireland) Ltd.
Gulf Oil (Luxembourg) S.A.
Gulf Oil Pakistan Ltd.
Gulf Oil Refining Ltd.
Gulf Oil Sales, Inc.
Gulf Oil (Switzerland)
Gulf Oil Trading GmbH
Gulf Oil Trading Investments Limited
Gulf Oil Zaire S.a.R.L.
Gulf Oman Petroleum Ltd.
Gulf Pipeline Company
Gulf-Preload Structures Inc.
Gulf Sales and Supply, Inc.
Gulf Supply and Distribution Co. Ltd.
Gulf (U.K.) Offshore Investments Limited
Harshaw Cabo & Cia, S.A.
Harshaw Chemie S.a.R.L.
Harshaw Galvanotechnia S.A.
Harshaw Quimics Ltda.
Hochtemperatur Reaktorbau G.m.b.H.
Hutchinson Island Limited Partnership
Ico Pinturas, S.A.
Industrias Vencedor S.A.
Interquimics S.A.
INSCO Holding and Finance Company N.V.
INSCO Limited
Java Gulf Ltd.
Kentucky Anfo, Inc.
Keydril Ltd.
Keydril (Nigeria) Ltd.
Key International Drilling Co. Limited
Key Perfuracoes Maritimas, Ltd.
Korea Oil Corporation
Kupan Emirates Company Ltd.
Kupan Financial Company (Rotterdam) B.V.—
Minerals Branch

Kuwait Oil Company Limited
Laurel Pipe Line Company
London Oil Refining Company Limited
Mid-Atlantic Chemical Corp. S.A.
Midwest Carbide Corporation
Millmaster Onyx (Canada) Ltd.
Millmaster Onyx G.m.b.H.
Montreal Pipe Line Company Limited
Mozambique Gulf Oil Company
New Frontiers, Ltd.
Niugini Gulf Oil Pty., Ltd.
Okinawa Sekiyu Seisei Company, Ltd.
Okinawa Terminals Co., Ltd.
Oklahoma Nitrogen Company
Panindustrial, S.A.
Peace Pipe Line, Ltd.
Pembroke Craking Company
Permapint, S.A.
Petroleo Gulf do Brazil Limitada
Petroleos Gulf de Guatemala, S.A.
Plaschem International Company (Hong Kong) Ltd.
Plastigama, S.A.
Productos Quimicos Somox, Ltda.
Project Baltic
Propet Company Ltd.
Raffinerie de Cressier S.A.
Rimbey Pipe Line Co., Limited
Rio Blanco Oil Shale Partnership
Sarni S.p.A.
Silvertown Lubricants Limited
Sociedad Anonima Espanola de Lubrificantes
Societe de Combustible Pour Reacteurs
a Haute Temp.
South Pacific Gulf Oil Company
Spanish Gulf Oil Company
Spencer Quimica Mexicana S.A. de C.V.
Sultron Ltd.

Sulzer General Atomic Waermetauscher
Surinam Gulf Oil Company
Taita Chemical Corporation
Trans Northern Pipe Line Company
Venezuela Gulf Refining Company
West Texas Gulf Pipe Line Company
Western G.M.C. Pontiac Buick Ltd.

AMERADA HESS CORPORATION

Anglomar Shipping Company, Ltd.
Ariadne Co. L.P.
Artemis Marine Co. L.P.
Atlas Marine Co.
Bushehr Petroleum Co.
Conner Terminals, Ltd.
D'Ippolito Oil Company
First United Shipping Corp.
Granreunion Co.
Interocean Tanker Corp.
Matco Tankers (U.K.), Ltd.
Meadville Corporation
Oasis Oil Co. of Libya, Inc.
Ontario Terminals, Inc.
Reserve Terminal Corporation
St. Croix Petrochemical Corp.
Second Reserve Terminal Corp.
Second United Shipping Corp.
Solar Gas, Inc.
South Jersey Terminal Corp.
Third United Shipping Corp.
Wyatt, Inc.

SHELL OIL COMPANY

Royal Dutch Petroleum Company
Shell Petroleum, N.V.
The "Shell" Transport and Trading Company, Limited

Basin Pipe Line System
Bullenbay Marine Services, N.V.
Butte Pipe Line Company
Capline System
Capwood Pipe Line System
Crown-Shell Baytown Feeder Line System
Curacao Oil Terminal N.V.
Dixie Pipeline Company
East Texas Salt Water Disposal Company
Explorer Pipeline Company
Gravcap, Inc.
Inland Corporation
LOCAP, Inc.
LOOP, Inc.
MESBIC Financial Corporation of Houston
Oil Companies Institute for Marine Pollution Compensation Limited
Olympic Pipe Line Company
Ozark Pipe Line System
Penn Central Corporation
Plantation Pipe Line Company
Rancho Pipe Line System
Seadock, Inc.
Ship Shoal Pipe Line System
Thums Long Beach Company
West Shore Pipe Line Company
WIDC (Wyoming Industrial Development Corporation)
Wolverine Pipe Line Company

SUN OIL COMPANY

Sun Company, Inc.

CONTINENTAL OIL COMPANY (CONOCO, INC.)

Big Sky of Montana Realty, Inc.
Calcasieu Chemicals Corporation
Condea Chemie, GmbH

CitCon Oil Corporation
Conch International Methane, Ltd.
Conoco, A.G.
  Petroquimica Espanola, S.A. (Petresa)*
  T.A.L. (Austria)*
  T.A.L. (Italy)*
  T.A.L. (Luxembourg)*
Conoco Limited
Conoco Management Company
  Conoco Exploration, Ltd.*
Conoco Mineraloel GmbH
  T.A.L.*
Conoco North Sea, Inc.
  K/s Statfjord Transport A.S. & Co.*
  Statfjord Transport A.S.*
Conoco Norway, Inc.
  K/s Statfjord Transport A.S. & Co.*
  Statfjord Transport A.S.*
Consolidation Coal Company
  Bishop Coal Company *
  Cardinal River Coals, Ltd.*
  Contochu, Inc.*
  Harmar Coal Company *
  Itmann Coal Company *
  Mathies Coal Company *
  Consolidation Coal Sales Company *
  Wolfpen Knob Development Company *
  Stone Cove Coal Company
Continental Carbon Company
  Carbon Black Espanola, S.A.
  Columbian Continental Europa, S.p.A.
  Compagnie Francaise du Carbon Black, S.A.
  Continental Carbon Australia Pty. Limited
  Continental Columbian Carbon Nederland, B.V.
  Continex Francaise S.A.R.L.
  Continex Nederland B.V.

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* Indicates partially owned company of wholly owned subsidiary.

Continex S.r.l.
Lucky Continental Carbon Co., Ltd.
Toyo Continental Carbon, Ltd.
Conoco (U.K.) Limited
Associated Petroleum Terminals (Immingham) Ltd.*
Cliffe Storage, Ltd.*
Crude Oil Terminals, Ltd.
Humber Oil Terminals Trustee, Ltd.*
Petroleum Storage, Ltd.*
Warwickshire Oil Storage, Ltd.*
Continental Pipe Line Company
Colonial Pipeline *
Dixie Pipeline *
Lake Charles Pipe Line *
Pioneer Pipe Line Company *
Platte Pipe Line *
Seadock, Inc.*
Seaway Pipeline, Inc.*
West Shore Pipe Line *
Yellowstone Pipe Line *
DuPont Holdings, Inc.
E.I. duPont de Nemours and Company
Explorer Pipeline Company
Felix Oil Company
Hudson's Bay Oil and Gas Company Limited
Alberta Gas Truck Line Company, Ltd.
Aurora Pipe Line Company
Cansulex Ltd.
Chieftain Mac Gas Ltd.
Hudbay Exploration, Inc.
Hudbay Mining Limited
Hudbay Oil Company of Denmark A/S
Hudbay Oil Company of Denmark Ltd.

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* Indicates partially owned company of wholly owned subsidiary.

Hudbay Oil (Australia) Ltd.
Hudbay Oil (Egypt) Ltd.
Hudbay Oil (Indonesia) Ltd.
Hudbay Oil International Ltd.
Hudbay Oil (Ireland) Ltd.
Hudbay Oil (Malacca Strait) Ltd.
Hudbay Oil (Netherlands) Ltd.
Hudbay Oil (Spain) Ltd.
Hudbay Oil (Turkey) Ltd.
Hudbay Uranium Ltd.
Hudson's Bay Oil and Gas Company (U.K.) Limited
Norske Hudbay A/S
Northward Developments, Ltd.
Peace Pipe Line, Ltd.
Rangeland Pipe Line Company Limited
Rimbey Pipeline Co., Ltd.
Smiley Gas Conservation Ltd.
Sultran Ltd.
Syncrude Canada, Ltd.
Kettleman North Dome Association
Long Beach Oil Development Company
Maritime Protection A/S
Nippon Aluminum Alkyes, Ltd.
Nissan Conoco Corporation
Oil Shippers Service, Inc.
OMW (Karlsruhe)
Pasa Petroquinica Argentina, S.A.
Petroleum Terminals, Inc.
Petrocokes, Ltd.
San Jacinto Eastern Corporation
Iricon Agency, Ltd.*
Selang Ltd.
Southern Facilities, Inc.
Standard Shale Products Company

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* Indicates partially owned company of wholly owned subsidiary.

MOBIL OIL CORPORATION

AB Djurgardsberg
Abu Dhabi Petroleum Company Limited
Adria-Wien Pipeline Gesellschaft m.b.H.
Aircraft Fuel Supply B.V.
Airtankdienst Koln
AK Chemie GmbH & Co. KG
Akauma Rekisei Kogyo Kabushiki
Alexandroupolis Petroleum Installation S.A.
Allied Asphalts Limited
Alpa Alet Ve Dayanikli Tuketim Mamulleri Pazarlama A.S.
Altona Petrochemical Company Limited
Alyeska Enterprises, Inc.
Alyeska Pipeline Service Company
Ankara Gaz Satis Anonim Sirketi
Arabian American Oil Company
Arabian International Maritime Company Limited
Arabian Petroleum Supply Company (S.A.), The
Aral Aktiengesellschaft
A/S Fjellvegen
A/S Kongens Plass 1
A/S Moretral
Associated Octel Company, Limited, The
ATAS—Anadolu Tasfiychanesi Anomin Sirketi
Atlas Sahara S.A.
Australasian Petroleum Company Proprietary Limited
Australian Synthetic Rubber Company Limited
Autobahn-Betriebe Gesellschaft m.b.H.
Aviation Fuel Services Limited
Aygaz Anonim Sirketi
Basrah Petroleum Company Limited
Bataan Refining Corporation
Bayerische Erdgasleitung GmbH
Bayerische Mineral-Industria A.G.
Belix

Belridge Oil Company
Pakistan Refinery Limited
Philippine Petroleum Corporation
Societe Reunionnaise Dientreposage
West Australia Petroleum Pty. Limited

PHILLIPS PETROLEUM COMPANY

Acurex Corporation
Aero Oil Company
Alyeska Enterprises, Inc.
Alyeska Pipeline Service Company
Arctic LNG Transportation Company
Bonny LNG Ltd. (P.P. Worldwide Gas Ltd.)
Bruin Carbon Dioxide Sales Corporation
Calatrava Empress Para la Industria Petroquimica, S.A.
Canada Western Cordage Co., Ltd.
Canyon Reef Carriers Inc.
Cochin Refineries Ltd.
Colonial Pipeline Company
Compagnie Francaise du Carbon Black S.A.
Dixie Pipeline Company
Everglades Pipe Line Company
Explorer Pipeline Company
Gardner Cryogenics Europe N.V.
Insurance and Reinsurance Brokers (Bermuda) Ltd.
Iranian Marine International Oil Company
Kaw Pipe Line Company
Kenai LNG Corporation
LeeFac, Inc.
Negromex S.A.
Nordisk Philblack AB
Norland GmbH
Norpipe A/S
Norpipe Petroleum U.K. Ltd.
Norsea Gas A/S
Norsea Gas GmbH

Norsea Pipeline Ltd.
Papago Chemicals, Inc.
Petrochim
Phillips Carbon Black Company (Pty.) Ltd.
Phillips Carbon Black Italiana S.p.A.
Phillips Carbon Black Limited
Phillips Gas Supply Corporation
Phillips Imperial Petroleum Limited
Phillips Pacific Chemical Company
Phillips Petroleum Singapore Chemicals (Private) Limited
Philmac Oils Limited
Plasticos Vanguardia S.A.
Polar LNG Shipping Corporation
Polyolefins
Powder River Corporation
Renolit Fertighaus GmbH
Seadock, Inc.
Seaway Pipeline, Inc.
Sevalco (Holdings) Limited
Societe De Developpement Des Polyolefins
Transatlantic Reinsurance
Trenwick Ltd.
Western Desert Operating Petroleum Company
White River Shale Oil Corporation

STANDARD OIL COMPANY OF INDIANA

Amoco Canada Petroleum Company, Ltd.
Amoco Credit Corporation
Amoco International Finance Corporation
Amoco Oil Holdings A.A.
Amoco Pipeline Company
Analog Devices
Cetus Corporation
Cyprus Mines Corporation
Amoco (U.K.) Exploration Company
Cyprus Anvil Mining Corporation
Solarex Corporation

AMERICAN OIL COMPANY

Standard Oil Company (Indiana)

OCCIDENTAL PETROLEUM CORPORATION

Canadian Occidental Petroleum Ltd.
Direccion Oxy, S.A. de C.V.
Efco Furnaces (S.A.) (Pty.) Limited
International Additives Limited
International Ore & Fertilizer Belgium, S.A.
KCL World Potash Ltd.
Microfine Minerals and Chemicals Limited
Oxy Metal Finishing Brasil S.A.
Oxy Metal Industrias Venezuela S.A.
Oxy Metal Industries (France) S.A.
Plastios y Derivados Compania Anonima ("Playdeca")
Plastiflex, C.A. ("Plastiflex")
USP Services Limited
Vulcan Material Plastico S.A.

TENNECO, INC.

Tennaco Corporation
Border Gas, Inc.
Oil Insurance, Limited
Mid-Western Gas Transmission Co.
Houston Oil & Minerals of Columbia, Inc.
Cofap
Monroe Auto Pecas S.A.
Onner do Brasil S.A.
Deepsea Ventures, Inc.
Kern Island Water Company
Kern River Canal & Irrigating Company
Mesbic Financial Corporation of Houston
American Synthetic Rubber Corporation
Racine Commercial Airport Corporation
Southern Facilities, Inc.

Nuodex of Canada, Inc.
Tennagasco Gas Gathering Company
HT Gathering Company
Oasis Pipeline Company
Collings Pipeline Company
T&M Terminal Company
Adela Investment Company, S.A.
Almi S.A.
Losenhausen Maschinenbau AG
J. I. Case (S.W.A.) (Proprietary) Limited
Muodex Italiana S.p.A.
Nuodex Mexicana, S.A.
Nuodex S.A. Industria E Comercia de se Cantes
Somadoc N.V.
P.P.M. Guindastes Hidraulicos S.A.
Poclain S.A.
Constructions Mecaniques de Carvin
Derruppe, S.A.
Materiel Poclain de Sud Est.
Meaux Materiel
Poclain Canada Ltee
Poclain Hydraulics, S.A.
Poclain Hydraulics Ireland
Poclain Italiana S.p.A.
Poclain Mexicana, S.A.
Potain-Poclain-Materiel, S.A.
Societe Financiere d'Etudes et de Gerance
Societe Mecanique Automobile de Touraine
Societe Mecanique de Tournai
Tallere Unidos, S.A.
S.A. Paper Chemicals Company (Proprietary) Limited
Societe Anonyme Industrille de Resines
Depositas del Norte, S.A.
Tees Storage Limited
Indonesian Enterprises, Inc.
Fedec Food Industries Limited

Albright & Wilson Match Phosphorus
Company Ltd.
Akulu Marchon (Pty.) Limited
Akulu Chemicals (Pty.) Ltd.
Marchon-Paragon Holdings (Pty.) Ltd.
Marchon-Paragon Sulphonation (Capte Pty.) Ltd.
Marchon-Paragon Sulphonation (Pty.) Ltd.
Albright & Wilson (Australia), Ltd.
Brooke Bond Oxo Ireland Ltd.
Oxo Company of Ireland, Ltd.
UIC-Marchon (Pte.) Ltd.
UIC-Marchon (M) SDN BHD
Albright, Morapji and Pandit Ltd.
Bush Boake Allen (Indian), Ltd.
Hundustan Flavours and Fragrances
(International) Limited
Bush Boake Allen (Jamaica), Ltd.
Bush Rafidain Flavour and Perfumery Co., W.L.L.
GMB Proteins Ltd.
W. J. Bush and Company (Ghana), Ltd.
W. J. Bush and Company (Nigeria), Ltd.
Erco Envirotech, Ltd.
Arndale Fuels, Ltd.
Bracey Petroleum Products, Ltd.
Tenneco Oil Products, Ltd.
Interirac Viehmann & Co.
Corax-Trac S.A.
Vibromax France S.A.R.L.
Walker S.A.
Establissement Robert Bellanger, S.A.
Mil Potrero Mutual Water Company
Stoco Mutual Water and Sewer Company

GETTY OIL COMPANY

Chase Transportation Company
(Joint Venture, "JV")
Chase Terminal Company (JV)

Chemplex Company
Chemplex Company (JV)
Chemplex Construction Corporation
Crescent Petroleum Company
Texoma Pipe Line Company
Mitsubishi Oil Company, Limited
Iricon Agency, Ltd.
Osage Pipe Line Company
Texas-New Mexico Pipe Line Company
Tide Water Oil Company (India) Limited
Vancouver Plywood Co., Inc.
Yong-Nam Chemical Company, Ltd.
Entertainment and Sports Programming Network, Inc.
Butte Pipe Line Company
Canadian Reserve Oil and Gas Ltd.
Gibson Holdings, Ltd.
Gibson Petroleum Ltd.
Halbouty Alaska Oil Company
Northern Tier Pipeline Company
Wascana Pipe Line, Inc.
Wascana Pipe Line, Ltd.
Chisholm Pipeline Company